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HISTORIC TRIAL

OF

ALI BROTHERS & OTHERS.

PART II.

PRICE Rs. 1/6 or Sh. 2/6.



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PROCEEDINGS IN THE SESSIONS COURT.

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THE "NEW TIMES" OFFICE,
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With the permission of Mr. R. V. Thadhani.



Shri Shankaracharya.

Maulana Shaukat Ali.

Dr. Kitchlew.

Maulana Mahomed Ali.

THE HISTORIC TRIAL.

Proceedings on the Opening Day.

In the Sessions Court, Karachi.

[MONDAY, 24TH OCTOBER, 1921.]

The Historic Trial of Maulana Mahomed Ali, Maulana Shaukat Ali, Dr. Saifuddin Kitchlew, Shri Shonkaracharya, Maulana Hussain Ahmed, Pir Ghulam Mujaddid and Maulana Nisar Ahmed in the Sessions Court, Karachi, commenced on Monday, the 24th October 1921, at the Khalikdina Hall, at 11-30 a.m., before Mr. B. C. Kennedy, Judicial Commissioner of Sind. The police and military arrangements were similar to those at the time of the trial in the Lower Court before Mr. S. M. Talati, acting City Magistrate of Karachi, at the Khalikdina Hall. The arrangements inside the hall were similar to those at the time of the committal magisterial enquiry. There was, however, a small raised platform for the Judge this time, and five chairs and a table were placed to the right side of the Judge for Jurors and Assessors; the Serishtedar and the Urdu interpreter and other office-men were seated in front of the Judge just below the dais.

The compound wall of the Khalikdina Hall adjoining the Bunder Road was fenced by barbed wires behind. There was provided ample armed European and Indian military which occupied the back portion of the Hall compound. Some tents, games and refreshments for soldiers were provided. There were several police officials at the gate and in the verandahs of the Hall. In the verandah behind the raised platform at the back of the Hall, was a small curtained chamber for the Judge.

The Crown was represented, as in the Lower Court, by Mr. T. G. Elphinston, Bar-at-Law, Public Prosecutor for Sind, assisted by Mr. Parsram Tolaram, B.A., LL.B. The Public Prosecutor was also specially assisted in the Sessions Trial, in pursuance of the decision of the Bombay Government, by Mr. Ross Alston, Bar-at-Law, the Advocate-General of the United Provinces. The accused leaders were, as in the Lower Court, unrepresented by any Counsel, and did not cross-examine any witness.

The eagerness of the public to witness the trial was keen, and leading gentlemen of Karachi including several members of the Karachi Bar were present to witness the trial. The admission to the Hall was by tickets issued by the Registrar of the Judicial Commissioner's Court, but several gentlemen were allowed without tickets, and strictness of supervision over the tickets at the gate was slackened. There were crowds almost every day on the Bunder Road outside the Khalikdina Hall, but they were throughout orderly and peaceful. Conspicuous in the Hall by the side of the accused leaders were a party of Khilafatists. Four or five Indian and European ladies, including Mrs. Sarojini Naidu, attended the trial.

In the Capital Court Trial, the seven leaders were brought in a closed Prison Motor Van preceded and followed by motor lorries full of armed European military. They all entered the Hall at 11 a.m. with smiling and cheerful faces. The audience stood up to do them honour and greeted them. The accused returned the greetings with graceful bowing of heads. At 11-30 a.m., the entry of the Judge was heralded by his havaldar carrying a heavy silver mace on his shoulder. On the Judge taking his seat, the proceedings commenced.

At the outset Mr. Elphinston, Bar-at-Law, Counsel for the Crown, thus addressed the Court :—

I want to have one copy of the charge sheet and I want to have one slight addition made. In the first charge after the words "that you all seven accused" there should be the words "at some time or times" and there should be instead of "between February and September 1921," "February 1920 to September 1921."

Mr. Mahomed Ali on being asked said :—We have no objection as non-co-operators ; we all want to understand the case only ; you may write what you like.....

Judge :—Sit down. I do not want that.

Mr. Mahomed Ali :—The charge is already amended as desired. I thought that it was made clear to us in Court that it was February 1920 to September 1921. We should have known of it before this, particularly when 131 Section can transport us for life and yet not a syllable of evidence was uttered for that against us. I do not know if it was in the head of the Magistrate that it was February 1920 to September 1921 or it was Public Prosecutor's. Now as if the proceedings of the Lower Court are

being made null and void what is the use of trial by a first class Magistrate when the decision can be brushed aside here? The P. P. said that he only wanted a "slight change" to be made but as it is, it is not a slight change. What was the use of our labouring in Jai to be prepared for the charge laid down by the Committing Magistrate when that has been brushed aside?

Mr. Mahomed Ali further said the committal proceedings were rendered null and void by the Magistrate's refusal to record the full statements of all the accused which constituted the most important part of the proceedings for the protection of the accused.

Mr. Mahomed Ali added that from first to last, ever since the Secretary of State and the Viceroy decided to launch the prosecution, there appeared to be no intention both in the Sessions Court and in the Lower Court, of exercising any judicial discretion.

The Court over-ruled the objections.

THE AMENDED CHARGE.

The following amended charge was then read out to the accused by the Serishtedar :—

"At a Court of Criminal Sessions held at Karachi before R.C. Kennedy, Esq., I.C.S., Judicial Commissioner of Sind, this 24th day of October 1921, the following accused persons :—

- (1) Mahomed Ali of Rampur.
- (2) Moulvi Hussein Ahmed of Deoband.
- (3) Dr. Saifuddin Kitchlew of Amritsar.
- (4) Pir Ghulam Mujadid of Matiari.
- (5) Moulvi Nisar Ahmed of Cawnpore.
- (6) Bharati Krishna Tirathji *alias* Vekantraman.
- (7) Shaukat Ali of Rampur.

committed for trial by S. M. Talati, Esq., City Magistrate, Karachi, are placed at the Bar and you all the 7 accused at some time or times between the months of February 1920 and September 1921, both inclusive, at Karachi and other places in British India were (with others) parties to a Criminal Conspiracy to seduce Mahomedan Officers and Soldiers in the army of His Majesty the King-Emperor from their duty and thereby committed offence punishable under Section 120B-115 read with Section

131 of the Indian Penal Code and within the cognizance of this Sessions Court and further that you Mahomed Ali on or about the 9th day of July 1921, at Karachi, made a statement, to wit, that "it is in every way religiously unlawful for a Musalman at the present moment to continue in the British Army or to enter the army or to induce others to join the army," with intent to cause or which is likely to cause Musalman officers and soldiers in the army of His Majesty to disregard or fail in their duty, as such, and thereby committed an offence punishable under Section 505 of the Indian Penal Code and within the cognizance of the Court of Sessions, Karachi.

And do further charge you the said seven persons that in pursuance of the said conspiracy attempts were made by a member or members of that conspiracy in or about the months of July or August 1921 to seduce Mahomedan officers, from their duty and sending leaflets in the form of Ex. 34 to such officers, and you thereby committed an offence punishable under Sections 120B-120C read with Section 131, I. P. C., and within the cognizance of the Court of Sessions, Karachi.

And further that you, (accused 2 to 7 inclusive) conspired with the said Mahomed Ali to commit the said offence under Section 505, I. P. C., which he committed in pursuance of that conspiracy and you thereby committed an offence under Section 109, I. P. C. read with Section 505, I. P. C. within the cognizance of the Court of Sessions, Karachi.

And further that you Mahomed Ali, on or about 9th day of July 1921 at Karachi abetted the commission of an offence punishable under Section 505 and-or Section 131, I. P. C., by more than ten persons in that you stated in the All-India Khilafat Conference that "It is the duty of all Musalmans in general and the Ulemas in particular to see that these religious commandments (referring to the words quoted above) are brought home to every Musalman in the army" and thereby committed an offence under Section 117, I. P. C., and within the cognizance of the Court of Sessions, Karachi.

And further that you, (accused Nos. 2 to 7) conspired with the said Mahomed Ali to commit the said offence under Section 117, I. P. C., which he committed in pursuance of that conspiracy and you thereby committed an offence punishable under Section 109 read with Section 117, I. P. C., and within the cognizance of this Sessions Court."

M. Mohamed Ali wanted copies of the charge as there were new charges. He further said :—

Before the Jury is called, I intend to inform the Court that the Magistrate committed us before the most important part of my statement was recorded. In the case of my revered friend Maulana Hussain Ahmed, his statement was not even heard by the Court. The Magistrate only recorded that he was reciting 34 couplets of Quran when, in fact, he was reciting Traditions. The statement of Sri Shankara charyara, a great Hindu Divine, was not taken because according to his rules of Sanyas, he did not get up. The statement of Dr. Kitchlew was not recorded and it was only noted that he abused the Government.

M. Mahomed Ali proceeded to say that on the very first day the English assumed reins of administration, they were promised religious freedom as laid down in the Proclamation of Queen Victoria.

The Judge said that it was not relevant.

M. Mahomed Ali :—Whatever the Court may think of us, we wanted to give our statement as it was according to our religious commandments to have passed the resolution.

He added that the Court was already prejudiced when in reply to a letter of the P. P. dated the 27th September it laid down that the case was to be committed to Sessions ! Moreover, the J. C. also came before the committal, to see if the Hall was suitable for the Sessions case !

The Judge did not reply.

The charge sheet was then read out in Urdu.

The accused were asked if they pleaded guilty.

Dr. Kitchlew wanted to speak something. He was asked on what point he wanted to speak.

Dr. Kitchlew said that the amendments that were made in the charge were against law. This made the case altogether different. If it was so, he wanted to say that it was the second Chapter of the "Tamasha" whose first Chapter had been enacted in the Lower Court.

The accused leaders were asked if they pleaded guilty.

M. Mahomed Ali said that he did not want to plead.

M. Shaukat Ali.—We are free and we do not care to plead before this Court.

Pir Ghulam Mujadid at this stage told the Court that some people had been sent to him the night previous, particularly Pir Thurabali Shah, asking him to apologise for the part he had taken in the Karachi Khilafat Conference. Pir Turabali Shah had told him if he did not apologise he would be given rigorous imprisonment for five years and would have to work at the *chaki*. Pir Turabali Shah had further said he had been assured that Government would release him (Pir Ghulam Mujadid), if the latter apologised. He had replied to Pir Turabali Shah saying that he would stand by his faith, and in the cause of religion he would not mind hardships of jail life or working at the *chaki*.

The Judge asked Pir Ghulam Mujadid to stop and sit down. Mr. Mahomed Ali protested and impressed upon the Judge the necessity of protecting the accused against unwelcome, nocturnal visitors to the jail.

P. P.:—"One witness was called to give evidence against accused No. 7. He could not come and I gave copies of his statements to the accused on Saturday for the benefit of the accused in order to see what he had got to say. But there is something to be added to it." He handed over the corrected statement to the Court.

The following gentlemen were declared selected by lot as Jurors, the Judge taking out slips from a box.

(1) Mr. Dayaram Gidumal—aged about 23—a clerk in Messrs. Forbes, Forbes and Co.

(2) Mr. C. D'Souza—head clerk, cotton department of Messrs. Ralli Brothers.

(3) Mr. Ramchand Tulsidas—head clerk, sugar department of Messrs. Ralli Brothers.

(4) Mr. R. D'Cruz—a clerk in the Bombay Co.

(5) Mr. D. Critchel.

Mr. Ramchand Tulsidas was appointed Foreman by the Jurors.

The gentlemen of the Jury then stated on prescribed oath that they would return a true verdict. The charge sheet was then read out to them by the Serishtedar.

PUBLIC PROSECUTOR'S OPENING ADDRESS.

The Public Prosecutor then delivered his opening address to the Jury. The following is an authorised summary of his speech :—

The Accused were charged with offences punishable under Sections 120B read with 131, I.P.C., Sections 505 and 505 with 109, I. P. C. and Section 117 read with Sections 505 and or 131 and Section 117 read with 109, I. P. C. [The Public Prosecutor explained the charges].

One only of these charges was *triable* by a Jury, *viz.*, the decision on the facts as to the guilt or innocence of the accused was in their hands as regards *one* charge only—the other charges involved in the case were *triable* by the Court with their aid as Assessors. He then explained Section 269 (3) of the Criminal Procedure Code and Rule 3, Chapter XIV, Rules of the Court of the Judicial Commissioner. He further explained to the Jury that they were Judges in fact only on the 2nd charge, all the others were triable by the *Court* with the assistance of their opinions as Assessors.

He read to the Jurors and Assessors Sections of the Indian Penal Code. He read *Section* 131 whole and relevant portion again and said :—“You will notice that the offence is *complete* if there is a mere *attempt* to seduce a soldier from his duty. It is quite immaterial whether the attempt is successful or unsuccessful. The *success* or otherwise of the attempt depends largely on the *loyalty* of the soldier and not on the efforts of the Accused. Thanks to the loyalty of the troops, you will in this case be concerned only with an *attempt* to seduce soldiers from their duty and a conspiracy to make that attempt.” He then read Section 120 A (1) which defines the offence of Criminal Conspiracy and said :—“In this case the prosecution allege that there was an agreement to commit an offence under Section 131, I.P.C. just read. Mere agreement to commit offence without doing anything more, is sufficient to constitute the offence, though in this case the prosecution allege acts were done. If 2 men agree for even one minute to do an illegal act, they are guilty of a Criminal Conspiracy, even though they never do anything at all towards carrying out their agreement and abandon the idea before doing any single act whatever. The illegal act, which the Accused are charged in this case with having agreed to commit, is *attempting* to seduce soldiers from their duty and, to show that each Accused is guilty, it is only necessary to prove that at some time or other between February 1920 and July 1921 he did *agree* with

other persons, who may or may not be before the Court now, to attempt to seduce soldiers from their duty." He then read explanation to Section 120 A and said :—

"The ultimate object of the agreement may be the restoration of the Khilafat to its former prestige. The ultimate object may be purely religious, it may be innocent, it may be even praiseworthy and the illegal act *may be merely incidental* to that ultimate object, *yet to agree to commit an offence even in such circumstances is a Criminal Conspiracy*. It is necessary that you should bear this *well* in mind. The Accused will tell you their action is prompted by religious motives. On the other hand you will find, when we come to deal with the evidence, that some or other of the Accused have at 2 Khilafat Conferences, both held within one month of each other, proposed Resolutions in which in the same breath they have said that to remain in the army at this time is "Haram," *i.e.*, contrary to the Mahomedan religion and have gone on to speak of an *Indian Republic*. The seduction of Mahomedan soldiers from their duty would be very useful as incidental to and facilitating the overthrow of the present system of Government, to which their speeches show the accused are bitterly opposed and the establishment of an Indian Republic. Whether the ultimate object was this or, as the Accused allege, purely religious—or partly each, is *wholly immaterial*. The *only* question for you is did the Accused *agree* to attempt to seduce Mahomedan soldiers from their duty. Their *ultimate* object does not concern you in *any* way whatever. It is *wholly and entirely* irrelevant.

The Prosecution do *not* allege that the Accused are the *only* members of this Criminal Conspiracy, which has for its object the seducing of Mahomedan troops from their duty. The charge alleges that they were parties *with others* to this conspiracy.

Nor do we allege that they were all parties to the conspiracy for the *whole* period covered by the charge. They doubtless joined the conspiracy at different times.

Though the offence of Criminal Conspiracy is complete as soon as 2 persons agree to commit an offence, even though the matter ends there and no one ever does anything in pursuance of that agreement, yet the punishment is different according to whether the offence is committed or not.

If an offence is committed by any member of a conspiracy in this case, that is, if *any attempt* has been made by *any* member of a conspiracy to seduce any soldier from his duty and that attempt has been made in pursuance of a conspiracy, to which any of the Accused was at any time between February 1920 and September 1921 a party (even though that act was done without the knowledge of the Accused and by a stranger to them), each and every one of the Accused who was party to that conspiracy that is *agreed* to an attempt being made, is liable to punishment as laid down in Section 109, I. P. C., read with Section 131, I. P. C., as if he had personally attempted to seduce that soldier from his duty. In this case the Prosecution allege that an attempt has been made to attempt to seduce certain Mahomedan Officers from their duty by sending to them leaflets making a strong appeal to them to leave the Army at once for religious reasons. The prosecution further allege that this attempt was made by some person or persons who, though the Accused may not have known it, were parties to the same conspiracy, to the same Agreement to seduce Mahomedan troops, as the Accused were parties to.

This is the subject of the second charge in the case and is the only part of the case in which the decision on the facts is in *your* hands. All other matters will be tried by the learned Judge and you will *only* be called upon for your opinions as Assessors.

You as a Jury will have to decide

First whether any attempt has been made to seduce any Mahomedan Officer from his duty, if so,

Secondly whether that attempt was made by any member of a conspiracy to seduce Mahomedan Officers and or soldiers, that is to say: "Was this attempt made by some person or persons who was *party* to an *agreement* or *attempt* to seduce Mahomedan Officers or soldiers?" If so,

Thirdly (and this point will *only* have to be decided by you as a Jury, if you first decide both the other points in the affirmative) were any of the Accused, and if so *which* of them, at any time between 1-2-20 and 30-9-21 parties to that Agreement to attempt to seduce troops?

I would ask you to pay particular attention throughout the case to these points. You are the sole judges of fact on these 3 points and to fix them clearly in your minds, I will take the liberty of repeating them. They are :

Firstly: "Has any attempt been made to seduce any Mahomedan Officer from his duty?" If so,

Secondly: "This attempt made by some person or persons who was *party* to an *agreement* to *attempt* TO SEDUCE Mahomedan Officers or soldiers?" If so,

Thirdly: "Were any of the Accused, and if so *which* of them, at any time between 1-2-20 and 30-9-21 parties to that Agreement to attempt to seduce troops?"

These are the only points for your decision as Jury.

If you as a Jury find any of the Accused not guilty on the second charge, the learned Judge will *then* ask you your opinions as Assessors on the following points to assist him to decide them—namely,

(1) Whether there was any criminal conspiracy to attempt to seduce Mahomedan Officers or soldiers, that is any *Agreement* between any 2 or more persons to *attempt* to seduce Mahomedan troops, even though *no* member of the conspiracy *ever* made *any attempt* to seduce any single soldier and the conspiracy never went beyond the stage of bare agreement to seduce soldiers.

If you held that some persons did agree to this, then you will have to give your opinion.

Secondly, whether any of the Accused, and if so which, were parties to that Agreement between the first February 1920 and the 30th September 1921, that is to say which, if any of the Accused, *agreed even for one moment* between these dates that the seduction of Mahomedan troops from their duty should be attempted.

These are the 2 points for you as Assessors to consider and give the court the benefit of your opinion under the first charge. Remember that under this charge it is *quite immaterial* whether or not any attempt was *actually made* to seduce a single man. Here it is only a question of *agreement* and nothing more. That is where this charge differs from the second charge which is triable by you as a Jury and on which you are the *sole* Judges of fact. Please keep the distinction clear and remember that first as Jurymen you have 3 questions to decide under the second charge and that after deciding the second charge *then*, as assessors you have to consider the 2 points which arise under the first charge only as against those, if any, of the Accused as you hold have not been proved guilty under the second charge.

Such of the Accused, as the *Court* holds were parties to such a Criminal Conspiracy, will be liable to punishment under Section 115 I. P. C.—read with Section 131—that is on a scale triable by this Sessions Court sitting with assessors.

Before outlining the evidence I will read another section—Section 10 of the Evidence Act, which is important as showing you how in a case of conspiracy after the common intention, the *purpose* of the conspiracy has first been entertained by *anyone* who is a party to the conspiracy, *anything* said, done or written, in reference to the common intention of the conspiracy by any single member of the conspiracy, whether or not he is an Accused before the Court, may be relevant against *each* and *every* member of the conspiracy who are before the Court, *both* for the purpose of proving the *existence* of the conspiracy *and* to show that the person before the Court are parties to the conspiracy and even though they were totally unaware of any of the acts proved and did not know the persons who did them.

[The P. P. read Section 10 of Evidence Act].

The illustration to the Section will help you to appreciate the exceedingly wide scope of this section. I will therefore read it.

[Read illustration] The first evidence in point of time which will be placed before you are Resolutions passed at a Meeting held in the Town Hall, Calcutta on 29-2-20. It would appear from the statement of Accused No. 7 that he was at that meeting. These Resolutions were on 6-3-20, proposed by No. 7 and carried at the Assam Khilafat Conference. No. 7 was President of the Conference and made a speech in which he referred to this subject. In the speech the idea is put forward in a safe conditional form—if the Khilafat does not remain as it was before the War, every Mussalman soldier and Policeman must *cease* to serve. Unfortunately the witness, Deputy Superintendent Sen, has arrived late and it will not be possible to examine him until a late stage of the case.

Next in point of time we have the publication on some date after the 6th September 1920 of the Mutafiga Fatwa, which has been published over the signatures of a large number of moulvies including both Accused 2 and 5. This Fatwa lays it down that "All Government services which help the Government are "Haram" specially those of the Police and Army." Thereafter the Jamait-ul-Ulema held at Delhi in Rabiul Awwal 1339 (November 1920), the second Resolution at which laid it down that "Under

the present circumstances it is religiously forbidden to have any connection of mutual help or support with the British Government and this included not to serve in the Armies of the enemies of the faith and not to render any sort of military assistance.

The proceedings of this Conference, which have been published in pamphlet form, show that Nissar Ahmed, Accused No. 5, spoke in support of this Resolution and that it was passed unanimously.

In February last the All-India Khilafat Committee, Bombay, (which has 5 Secretaries of whom Accused 3 and 7 are two, No. 1 being a member) received 240 copies of this Fatwa which they distributed free of charge in the months of February to May 1921, as proved by the Stock book of the All-India Khilafat Committee.

2 copies of the first edition of this Fatwa were received by the Complainant in March in Karachi.

A later Edition of this Fatwa was brought out in February 1921 which is signed also by Accused No. 4, thereby showing his Agreement with it.

Meanwhile the Secretaries of the All-India Khilafat Committee conceived the idea of reprinting and publishing the Muta'fiqa Fatwa with the proceedings of the Jamayat-ul-Ulema already referred to, together with a fore word written by one of their number Mr. Khatri, in which he called upon his readers to act upon the commandments of God contained in the Fatwa.

The order for printing 5,000 copies of this collection was signed on 14-2-21, but apparently the time was not then thought ripe for its publication and no copies were obtained from the printer until the 21st July 1921.

The order is actually signed by Mr. Abdul Ghani, Superintendent of the All-India Khilafat Committee Office who also received 2,000 copies on 21-7-20 and handed them to the Literature Clerk of the Committee for distribution. Mr. Abdul Ghani and the printer Ahmed Mahomed will be called as witnesses and the necessary documents put in evidence.

Mr. Kelly, Deputy Commissioner of Bombay, C. I. D., will also be examined in this connection.

Meanwhile the Accused before the Court had come into the open and from Political platforms had openly propounded the Idea that service in the Army was "haram."

On the 17th June at Poona Accused 7 delivered a short speech bearing on the subject. This was taken down in shorthand by Sub-Inspector Muzumdar of the Poona C. I. D., a witness in this case.

Two days later on the 19th June Accused 1 proposed and No. 3 seconded at a Khilafat Conference at Gokak in Belgaum one of the Resolutions mentioned above in which it was stated that (Read Ex. 72), Inspector Joshi and Sub-Inspector Nirwan will be called to prove this, but the *best* evidence will be copies found in No. 1's kit admitted by him to be correct and proved by Government handwriting expert to be in his handwriting.

The next item is the Resolution at Karachi All-India Khilafat Conference on 9th July. (See Ex. 47 of Committing Magistrate) taken down by 2 practised Urdu shorthand writers.

The first charge alleges that the 7 Accused were parties to the conspiracy at Karachi. The evidence of this centres round the 6th Resolution of the All-India Khilafat Conference. Resolution was read out by No. 1 who moved it and impressed its importance. [Here the P. P. detailed the part of each Accused and their close connection at Karachi].

In addition to the above there was also close association of Accused No. 7 with accused Nos. 1 and 3. They *put up together*.

Accused No. 7 spoke at Subjects Committee in the morning and evening *re* Karachi incidents. You will have (1) Evidence of the Complainant Mr. Zaman Shah who was present at the Conference throughout.

(2) Mr. Mahomed Bux, Deputy Collector, will give general evidence on the same points corroborating Mr. Zaman Shah. Then there is the

(3) Evidence of Lakht Hussein and Shan Bahadur.

(4) Mr. Burns, Mr. Jeswani Urdu shorthand writers, and 2 Reporters of the "Daily Gazette" and the "New Times" respectively.

(5) Evidence of one sub-inspector Abdul Ghafoor and 2 Head Constables Mahomed Usman Ghani and Fateh Bahadur who watched premises heard Accused 7 speaking at Subjects Committee and saw No. 6 go there.

You will also have the evidence of Inspector Karamchand re. accused No. 7 going from Karachi to and speaking at Naushahro Feroze on 11-7-21. He will depose re. his speech there on 11-7-21. Conspiracy is a question of presumption, remember.

I will also lead evidence re. the finding of copies of Gokak Resolution in the kit of Accused No. 1 *i.e.* Mr. Mahomed Ali in the evidence of (1) Mr. Shunker, Jailor of Waltair, (2) Inspector Abdul Karim, Madras C.I.D. And lastly letters written by No. 1 in Karachi Jail will be proved by Mr. Damree Jailer, and;

The Handwriting Expert to Government will formally prove that the 2 copies of the Gokak Resolution found in the kit of No. 1 are, the one wholly and the other partly, in the handwriting of Accused No. 1—a fact which he does not deny.

The evidence of the *completed act*, the substance of the 2nd charge (which you will try as Jury) that Leaflets, which were a digest of the Fatwa, were actually sent to Mahomedan Officers in the Army. For these you will have the evidence of (1) Colonel Gwyer, (2) 2 Indian Officers, and (3) I will tender evidence of 3rd Officer Subedar-Major Jiamam who is ill and unable to come to Karachi.

The P. P. here *read and explained* other charges under Section 505 I. P. C. and Sections 505-109 I. P. C. read Section 107 and 109 I. P. C. and explained and outlined the evidence under Section on 117 I. P. C. with 505 and-or 131 I. P. C. He also read and explained Section 117 I. P. C. and Sections 109 with 117 I. P. C. and outlining evidence.

THE DEPOSITION OF PROSECUTION WITNESSES.

EVIDENCE OF ZAMANSHAH.

The first witness Zamanshah Mahbub Shah aged 40 Mahomedan, Suni, Hashimi, Deputy Superintendent of Police, Karachi, deposed as follows :—

I am complainant in this case. I filed it under the orders of the Government of Bombay and D. S. P., Karachi. I produce the order of the Government and the D. S. P. Exhibits 3 and 4. I was on the Karachi City Police Station on the 7th July when the Quetta mail arrived. Accused 6

and 7 arrived by that train, They were taken to the Kanaya Pathshala. That was close to the Pandal where the Khilafat Conference was to be held. The accused 1 and 7 put up there during the Conference. So also did Kitchlew accused 3. The Conference was held here on 8th, 9th and 10th July. I attended all the sittings of the Conference. The proceedings began at about 5 p.m. and lasted up till 10. On the first day presidential address was given by accused 1. The accused 1 said thereafter that a subjects committee would be formed which would consist of ten members^s from Bombay and Sindh and five from other Provinces and all the members of the Central Khilafat Committee. I had four men on duty at the Kanya Pathshala. They reported that the Subjects Committee held a meeting on the 9th July between 9 and 11 a.m. and again in the evening about 7 p.m. These were held at the Kanya Pathshala. They were private. The resolution in question was passed on the evening of the ninth, it contains a correct translation. It was originally passed in Urdu. It was passed on the evening of the ninth. The resolution was read out to the audience by accused No. 1.

He said it was the most important resolution and the essence of the Conference. It was proposed by accused 2 Hussain Ahmed who spoke in Urdu. Notes of the speeches were taken by Inspector Lakhat Husnain, and S. I. Shah Bahadur Khan. Accused 4 then translated into Sindhi. Accused 4 translated the words "Unlawful to remain in the army" into Sindhi by saying 'Nokari Karana haram hai.' He also spoke on the resolution. Notes of his speech were taken by Inspector Karamchand and S. I. Abdulla. He spoke in Sindhi. Then accused 3 spoke in Urdu. Accused 5 Nisar Ahmed also spoke. Notes of their speeches were taken. Accused 6 Venkatrama spoke on the resolution in English. Short-hand notes of Venkatrama's speech were made by clerks Basarmal and Topandas.

[Mr. Mahomed Ali took objection to the witness calling Shankaracharya as Venkatarama. He said the witness called him and his brother Moulanas. He also called Dr. Kitchlew who possessed only a German degree as a doctor, Pir Ghulam Mujadid as a Pir and addressed Hussain Ahmed and Nisar Ahmed as Moulana and Moulvi respectively. He made an exception only in the case of Sri Shankaracharya who having entered Sanyas, could not bear his old name according to Hindu Dharma and must be called only by his new ashramic name. All of them claimed the

Jagadguru as the Shri Shankaracharya and the ordinary courtesy of calling the Shankaracharya by the name of his present ashram should be extended to him.

The Judge told M. Mahomedali that the Shankaracharya must make his grievance known to the court.

M. Mahomedali said :—It is a very delicate matter for the Shankaracharya to speak upon. We, as his friends, must speak for him.

The Judge asked His Holiness what his name was.

The latter answered sitting that his name was Shri Sankaracharya Bharati Tirthaji.

The Court :—Will you stand up and answer ?

Shri Shankaracharya :—It is against the rules of our Ashrama to stand up and answer.

M. Mahomed Ali :—I do not care if I and my brother are not called Moulanas. It matters little to us although I graduated from the Ferangi Mahal School and earned my title like my father before me. Personally, I don't object. But I must speak on behalf of the Shankaracharya. Surely, when my friend, Dr. Kitchlew, who is the possessor of a mere German degree is called a doctor, the Shankaracharya must be addressed in a way befitting his high station in life.

[The Court here said something, which was inaudible].

Witness Zamanshah then continued :—

Some of them had brought their followers with them. All the provinces were represented except Bengal. There were students of the Aligarh University. There was much excitement among the audience. There were representatives of newspapers there. An account of the resolution No. 6 and the speeches thereon were published in the "Daily Gazette" and the "New Times." No account appeared in the "Sind Observer." I have seen the Mutafiga-al-Fatwa. I first got a copy of it in last March. Two copies I got from a Pathan in Karachi. I produced one of the copies in the lower Court. I have got it here [Ex. 5]. It purports to be singed by accused No. 2 and 5 (M. Hussain Ahmed and Pir Ghulam

Mujaddid). I have got a later edition in August Ex. 6. It purports to be signed by accused 2, 4 and 5. (M. Hussain Ahmed, Moulvi Nisar Ahmed and Pir Ghulam Mujaddid). The proceedings on the evening of the 9th began at 9-55 p.m. and ended at 1-25 a.m.

GOVERNMENT EXPERT'S EVIDENCE.

The second witness was Frank Brewster, aged about 45, Christian, Handwriting expert to Government, Simla. Before his evidence was taken, M. Mahomed Ali said :—

May I know under what law his evidence is being taken ? He had not been examined in the lower Court.

P. P.—As I already said, Sir, his opinion had been received only a few days back, the copy of which had been handed over to the accused.

J.—When ?

P.—On Friday last.

M. Md. Ali.—The gentleman never appeared before me and only the copy had been supplied. What I want to ask is this : how many addenda and corrigenda are being supplied in this case ?

The Judge said that it was an exceptional case.

The witness deposed as follows :—

I am handwriting Expert to Government. I saw Ex. 7 and 8. They were sent to me for examination. Exts. 9, 10, 11, 12 and 13 were also sent. I compared the handwriting in 7 and 8 with the handwriting of the other exhibits. Ex. 7 is in the same handwriting as 9 the proved signatures. The ink portion of 8 is the same, as the Urdu document sent to me. I sent my opinion to the City Magistrate. I had received these documents from the City Magistrate in a sealed cover. The seals were intact.

After the witness had finished M. Mahomed Ali said :—

Can I know if I can get my documents back which are my property ? Under what law am I deprived of them ?

They were never seized by any search warrant. They were taken from me at the time of arrest. I had sent for them at the Waltham Jail and asked the Jailor to send the papers to my wife.

I had asked the D. M. of Vazirapatam why he kept the documents. I told him :—"You have not seized them under any search warrant, can you cite any law, under which you can keep them with you ? " He could not cite any law. I asked him to send the papers to my wife but he said I should refer to D. M., Karachi.

Judge :—I cannot help it.

M. Mahomed Ali :—Is there any man on earth who can help me ?

Some of these papers have been filed as exhibits, and some have been sent to Simla and some have been sent to my wife. I take it that I am robbed, absolutely robbed and the Viceroy, I believe, has been receiving stolen property. (Laughter in the Court).

MAHUMAD BAKSH'S EVIDENCE.

The third witness was Mahumad Baksh Illahi Bux, aged about 30 years, Mahomedan, Shaikh, Dy. Collector of Hala, who deposed as follows :—

I was present in Karachi in July last at the Khilafat Conference I remember Resolutions 5 and 6 being put before the Conference. The order of Government contains a correct translation of Resolution No. 6.

Accused 1 read it out and introduced it. It was proposed by accused No. 2. No. 4 translated it into Sindhi. He spoke on it.

Accused 3 Kitchlew seconded the Resolution. After him accused 5 spoke. Then accused No. 6 spoke.

Mahomed Ali then put the Resolution to the meeting and asked those who concurred in it to stand up. All stood up. Between 2 and 3 thousand were present on that night. The audience were mostly Musalmans. There were some of the Ulama present. I cannot say how many. I do not remember if there were any Sindhi Ulama present.

The speeches caused some excitement. Much excitement. I had gone there on duty. The meeting was open but admission was by tickets,

LAKHAT HUSSAIN'S EVIDENCE.

The fourth witness was Lakhath Hussain Tarsalan Hussain, aged about 40 years, Mussalman, Shia Sazed, Inspector, C. I. D., who deposed as follows :—

I was present at the Khilafat Conference in July. I had been sent there to report speeches. Such speeches are made in Urdu. I take down these speeches in short-hand. I have been doing this work for some years. I was present at the sitting of the Conference on the 8th of July. Mahomed Ali delivered his Presidential address. He asked for selection of a Subjects Committee consisting of members from each branch. I took them down what he said. I have transcribed those notes into longhand. Ex. 16 is the true transcript of my notes. He (Accused 1) said what is written there. Ex. 17 is that translation.

It is all that he said on this subject. I was present at the Conference on the 9th July when the 6th Resolution was put to the meeting. It was read by the President Mahomed Ali. He said a few words. I took them down. Ex. 18.

It represents what he said accurately. Ex. No. 19 is the translation. Accused 2 made a speech and proposed it. I took down his speech in shorthand. I have prepared a transcript and translation, Exs. 20 and 21. Accused 2 actually said what I recorded there. After that accused 4 spoke in Sindhi thereon. Kitchlew spoke (Accused 3). I took down Kitchlew's statement. I have prepared a transcript and translation, Exs. 22 and 23. He said as I have transcribed it.

The evidence of this witness was finished when the Court rose for the day at about 5 p.m.

SECOND DAY'S PROCEEDINGS.

(TUESDAY, 25TH OCTOBER 1921).

The proceedings were resumed again on Tuesday, the 25th October 1921, at 11-10 a.m. when the judge entered the Hall from the back door. Many persons among the audience stood up, but the accused leaders and a portion of the audience remained sitting. The judge looked at the accused and finding them all engaged in reading, asked the Serishtedar to ask the accused to get up from their seats. All the accused leaders refused to stand up whereupon their chairs were ordered to be removed. The accused immediately vacated the chairs. Maulana Shaukat Ali put off his broad and long green Khadi cloak and spread it on the floor. Dr. Kitchlew spread a bundle of papers on the floor and sat down. M. Mahomed Ali immediately spread his coat on the floor on which he requested Shri Shankaracharya to sit.

The judge asked them to stand up but they refused to stand up, whereupon Mr. Boyd, Police Superintendent, was asked to make the leaders stand. He came near Maulana Mahomed Ali and asked him to stand up.

M. Mahomed Ali.—Under what law ?

The Serishtedar communicated Judge's words to them :— Out of respect due to the Court.

Maulana Mahomed Ali said if he had respect for the Government he would not have been tried in the Court. The Judge could do whatever he chose. He could make them stand by using force only.

Court :—If you persist in this, you will be tried for contempt of Court.

The leaders remained calm and unperturbed. They were then informed that they would be tried for contempt of Court.

The Public Prosecutor then pointed to the Judge some minor mistakes in the statement of Mr. Zaman Shah and cleared the matter by saying that Exhibit No. 8 was in the same handwriting as the Urdu document, and the word "it" referred to the text of Resolution contained in the Government order. While P. P. was doing this, Maulana Mahomed Ali got up and said :—" I want to know what is going on at present. I want to follow it." The Judge asked him to sit down.

M. Md. Ali :—I refuse to sit down and stand up at your order, as I did in the Lower Court. I shall sit of my own accord. If you do not want to hear me, you need not try us but simply sentence us at once.

The Judge remarked that his conduct was foolish.

M. Md. Ali :—Whether it is foolish or wise it is not for you to judge. I know quite well that it is a wise one. I have not to show respect for the contemptible Government. If you are not going to hear us better close the farce and sentence us. The Court must have some power, if not, you can pass the law and hang us or shoot us if you like.

The Public Prosecutor then continued to examine Lakhat Hussain.

The witness said :—

After No. 3 accused 5 spoke in Urdu language. I took it down in short-hand. I prepared a true transcript in longhand in Urdu, Ex. 24, and the translation Ex. 25. Accused 5 said what I actually have written there.

After that accused No. 6 spoke in English but I did not record that. The President made a few remarks. I took them in short-hand and transcribed them in Urdu. The President spoke in Urdu [Exs. 26 and 27.] Accused 1 actually said what I have recorded in my transcript. I have got my original Urdu short-hand notes. The cries of Allah-O-Akbar, etc., were uttered by the audience. There was some enthusiasm about the Resolution among the audience.

The original residence of the accused is Rampur State. I know him personally. He has resided in Rohil Khand and other places in Hindustan and in Aligarh in connection with the College. I do not know if he was in service of Rampur State. Accused 2 is a resident of Deoband, District Saharanpur, U. P. Nisar Ahmed is a resident of Khanpur. Shaukat Ali was originally of Rampur State. He does not now live much in North India but in Bombay. Mahomed Ali was educated in the Aligarh College. I do not know if they are of Shia origin. I do not know about Mahomed Ali's diploma.

The Court asked Moulana Mahomed Ali whether he would cross-examine the witness. Maulana Mahomed Ali got up and said :—

How is it that the Court is putting questions to me when the Court does not want to hear what I say ? If I take part in the case and ask what is being done, the Court does not take note of it unless I remain standing up. I think the Court has been changing its position.

Judge.—Will you cross-examine or not ?

M. Mahomed Ali.—I shall ask the question first whether I am entitled to refer to the Court when the Public Prosecutor is putting new words in the deposition of the witness which are not there.

Judge.—I think not.

M. Mahomed Ali.—Then if I am not entitled to ask any question in connection with P. P.'s suggesting the alteration of any deposition, I should be supplied a long or a short list showing me where my rights begin and where Court's grace comes in and in the case of the latter, I shall not ask anything.

The Judge remarked that it was an intervention.

M. Mahomed Ali.—This is not an intervention. I have seen many cases where these learned members of the bar get up without any provocation and suggest additions and alterations as they choose.

Judge.—Will you cross-examine or not ?

M. Mahomed Ali.—I shall not answer the question unless I get a reply to my question.

The Court then asked other leaders whether they would cross-examine the witness.

Dr. Kitchlow said: I don't want to answer a question where I am disrespected.

Pir Ghulam Mujaddid offered the same answer.

SHAN BAHADUR'S EVIDENCE.

The fifth witness was Shan Bahadur Khan, son of Khan Bahadur Khan, aged about 35 years, Musalman, Pathan, Sub-Inspector, C.I.D., Allahabad, who deposed as follows :—

I attended the meeting of the Khilafat Conference in Karachi last July as a short hand reporter. I took down in Urdu language. I am accustomed to take down speeches in Urdu. I was present on the 9th July. Accused 1 read out the Resolution No. 6. I took it down as he read it out. He made some introductory remarks. I made a correct transcript from the Urdu short hand into long hand and a translation Exs. 29 and 30.

The Resolution was then proposed by accused 2 in Urdu. I took down his speech in short hand. It is a correct transcript from my notes. It is translated [31-32]. Then accused 4 spoke in Sindhi. Then accused 3 Kitchlew. I took down his speech in short hand. I prepared a transcript of it. I produce this transcript in the Court of the City Magistrate. I see the transcript. I identify it. There after accused 5 spoke in Urdu. I took down short hand notes of his speech. I made a transcript of his speech in long hand. I produced that transcript in the Court of the City Magistrate. I identify it. After accused 5 spoke, accused No. 6 spoke. The Resolution was put to the meeting by accused No. 1 Mahomed Ali. I have got my original notes here from which I prepared the transcripts.

BASARMAL'S EVIDENCE.

The sixth witness was Basarmal Jawharmal, aged about 28 years, Hindu, Amil, Shorthand writer, Karachi, who deposed as follows :—

I was present at the sittings of the All-India Khilafat Conference in July last. I took down in short hand the speeches which were made in English. I took down a speech made by the accused No. 6 on the evening of 9th July. That speech was made on Resolution No. 6. I prepared a transcript from my short hand notes Ex. 34. The transcript is correctly prepared. It represents what accused No. 6 said, Ex. 35.

TECKCHAND'S EVIDENCE.

The seventh witness was Teckchand Hemandas, aged 29 years, Hindu, Amil, Head Master, New High School, Karachi, who deposed as follows :—

I attended the proceedings of the Khilafat Conference last July. I took notes of the Resolution and the speeches made on it. I wrote a report from the notes. Those were of the speeches on the Resolution itself. I got a transcript from the "New Times" Paper. There was a special bulletin of the "New Times". I sent in my report on Monday, 11th. Ex. 37

WILLIAM ROSE'S EVIDENCE.

The eighth witness was William Rose Burns, aged about 50, Presbyterian, Journalist, Karachi, who deposed as follows :—

I am Assistant Editor the "Daily Gazette." I received a report of the proceedings on the evening of ninth July from Teckchand. That was Ex. 37. I produced this report in the Lower Court. One page is missing. I published it correctly in my newspaper *vide* issue of 11th July Ex. 39.

HARIRAM'S EVIDENCE.

The ninth witness was Hariram Shewaram, aged about 21, Hindu, Lohana, Reporter, the "New Times," Karachi, who deposed as follows :—

I attended the Karachi Khilafat Conference in July. I took notes of those proceedings. I gave the copies of those notes to Mr. Jeswani in English. I speak Sindhi. I understand the resolution translated into Sindhi.

T. K. JESWANI'S EVIDENCE.

The tenth witness was Tikamdas Khemchand Jeswani, aged about 27, Hindu, Lohana, Editor, the "New Times," Karachi, who deposed as follows :—

Last witness attended the Khilafat Conference as a reporter of my paper. He gave me a report of the proceedings of 9th July. I published that report in my issue of Monday, the 11th, Ex. 42. I have not got the original record. I eventually got authentic copy of this resolution from the Khilafat Committee in Karachi. I published that in my issue of the 18th. I asked the Secretary of the Committee for a copy of the Resolutions and received it from him. The Resolution No. 6 is that numbered 7, Ex. 43. I have not got the Resolution in original,

ABDUL GHAFUR'S EVIDENCE.

The eleventh witness was Abdul Ghafur Zardar Khan, aged about 38, Mahomedan, Pathan, S. I. Police, Sind C.I.D., Karachi, who deposed as follows:—

I went in the Kanyapathashala on the morning of the 9th July. Two head constables were on duty there. I asked what was going on. They said there was a meeting of the Subjects Committee. I could not recognise the voice of accused 7. I have frequently heard him before. He speaks with pauses because he is fat. I was there for half or three quarters of an hour. The Subjects Committee dispersed at about 11 a.m. or so. I went round in the evening. That was about 7 or 7-30 p.m. Head Constable Keshowlal and Usman Ghani were on duty there. They told me that a meeting of the Subjects Committee was held there. I got a copy of the Mutfika Fatwa, Ex. 6. I handed it over to the Deputy Superintendent. It was handed to me by a Pathan in Karachi City. He told me that I was employed in the Police and therefore I should read it.

FATEH BAHADUR'S EVIDENCE.

The twelfth witness was Fateh Bahadur Lakhshmi Parsad, aged about 32, Hindu, Kayastha, Head Constable, C. I. D., Karachi, who deposed as follows:—

I was on duty at the Pathashala during the Khilafat Conference. Accused 1, 3 and 7 put up there during it. On the morning of the 9th July, I was there from 8-28 to noon. I saw Shaukat Ali and Kitchlew in one gari at 9-30 a.m. and Mahomed Ali in another. Many persons came there including No. 6. There was a meeting of the Subjects Committee there. Accused 7 I could hear speaking. After 11 a.m. the Subjects Committee broke up. I was on duty there after 12 midnight. At about 1-30 a.m. I saw accused 1, 3 and 7 returning from the Conference.

USMAN GHANI'S EVIDENCE.

The thirteenth witness was Usman Ghani Mahomed Ismail, aged about 28, Mussalman, Sheikh, Head Constable, C. I. D., Karachi, who deposed as follows:—

I was on duty at Karachi during a meeting of the Khilafat Conference at the Pathashala on 9th July from 7 a.m. to 12 noon. I saw some people come there for the Subjects Committee. Mahomed Ali and Shaukat Ali,

Kitchlew and Venkantraman. I recognised the speech of Shaukat Ali. I was on duty there that evening. I heard in the evening the voice of Shaukat Ali. He spoke in a high voice. I had heard him speaking before.

The Court then rose for lunch at 2 p.m.

The Court met again at 3-5 p.m.

KARAMCHAND'S EVIDENCE.

The fourteenth witness was Karamchand Ramlal, aged about 39, Hindu, Khatri, Inspector, C. J. D., Karachi, who deposed as follows:—

I attended the sittings of the last Khilafat Conference in July in Karachi. I was present on the evening of the 9th of July when the sixth Resolution was passed. The Resolution is correctly translated in Ex. No. 3. It was translated into Sindhi by accused No. 4. He also spoke in support of the Resolution. I took notes of it. All of the accused except Shaukat Ali spoke in support of that Resolution. I left Karachi next day on the 10th. Then I left by the Punjab mail, some of the accused 3 and 7 left by the same mail. No. 7 went to Naushahro Feroz. Accused 3 went direct towards Sukkur. Naushahro Feroz is in Nawabshah District in Sind. I went there also. There was a first political Conference of the Sahiti district there. Shaukat Ali was president. There were two sittings one in the morning and one in the evening. Accused made two speeches one at each sitting. I took notes and have been doing so for the last five years. Accused No. 7 spoke in Urdu. I am well acquainted with Urdu. I recorded it in Urdu. I have produced those notes in the Lower Court. This is the fair copy and the original Ex. 48. The translation is Ex. 56. This is the evening speech. It is a correct translation of what accused 7 did say. Dr. Choithram translated his speech into Sindhi.

MAHMUDSHAH'S EVIDENCE.

The fifteenth witness was Mahmudshah Nawabshah, aged about 43, Mussalman, Sayed, D. S. P., Thar and Parkar, who deposed as follows:—

I prepared Ex. 17, it is a correct translation of Ex. 16.

I prepared Ex. 19. It is a correct translation of Ex. 18.

Ex. 21 is a true translation of 20.

Ex. 23 is a true translation of 22.

Ex. 25 is a true translation of 24.

Ex. 27 is a true translation of 26.

Ex. 30 is a true translation of 29.

Ex. 32 is a true translation of 31.

I also in the City Magistrate's Court prepared true translations of the speeches of Nisar Ahmed and Dr. Kitchlew. The leaflet shown to me Ex. 51 is accurate. Ex. 49 is a true translation of 48.

ABDULGHANI'S EVIDENCE.

The sixteenth witness was Abdulghani Barkat Ali, aged about 30, Mussalman, Rajput, Superintendent, Central Khilafat Committee, Bombay, who deposed as follows:—

The book is the stock book of the Central Khilafat Committee. Mr. Kelly came to search the Central Khilafat Committee in Bombay. He took this book away from the office. As a rule I sent out the literature on my own responsibility. Entries in the book are made by the clerk in charge. It is his duty to enter in the book, literature which is received and which goes out. Entry No. 30 in the month of February refers to receipt of 240 copies of Muta'fik Fatwa. During the month 151 were issued Ex. 54. The clerk who distributed them made the entries. It was he who distributed them made the entries. It was the clerk's duty to distribute them and enter them in the book. Item No. 30 shows a balance in March of 89 copies. In April there is an opening balance of 27 copies, May balance is of 26 copies, Exs. 56 and 57. June shows no balance, Ex. 58. In July 2,000 copies were received, Ex. 59. We charge for the literature that we issue to the public. The first 200 copies were issued to the visitors free. I sent the Fatwa to be printed at the Mustafai Press. I did it on my responsibility. The title page of the pamphlet bears an endorsement signed by me, Ex. 60. I signed that order on 14th February 1921. I signed it in February. I don't remember whether I sent it to the press then. Very likely, I sent it to the press later on. I received 2,000 copies from the press. Ex. 61 is the receipt signed by me. I handed over those copies to the clerk with instructions to hand them over to any one who would pay 4 annas and not to send them outside. I do not know that any copies of either of these pamphlets were sent out with cyclostyled letter signed by Shaukat Ali. I don't think that Shaukat Ali ever signed such letter; the letter used to be issued by some clerk in his name.

M. Mahomed Ali here said.—Why is poor Mr. Kelly being troubled now and then, whenever there is a gap to be filled, by going all the way from Karachi to Bombay to again and again search the Central Committee office? Let Mr. Kelly be sent for here and let him bring the whole

office; and when the entire body is removed here search it like a fish-pond and let us all be transported once for all for life (laughter in the Court.)]

The witness continued:—Shaukat Ali is one of the Secretaries of the Central Khilafat Committee. Dr. Kitchlew is one of the Secretaries. He is deputed to work in Punjab. No. 1 is one of the members of the Khilafat Committee. There are 200. Shaukat Ali does not spend much of his time in Bombay. The introduction to the papers sent for publication to the Mustafid press was written by Khatri, Ex. 62. Among the papers was the Muttalik Fatwa and the proceedings of Jamait-ul Ulema-al-Hind Ex. 62. These proceedings were printed. I don't know who has published it.

MAHOMED AHMED'S EVIDENCE.

The seventeenth witness was Mahomed Ahmed, aged about 35, Mussalman, Sheikh, Printer, Bombay, who deposed as follows:—

The name of my press is Mustafai. I received Ex. 60 together with the copy of Muttalik Fatwa and the proceedings for printing. Last witness Abdul Ghani gave them to me for printing. The original order was for 5,000 but afterwards I was asked to print 2,000 only. I delivered 2,000 on the 21st July. I have Abdul Ghani's signature in the delivery book.

VITHAL RAMCHANDRA'S EVIDENCE.

The eighteenth witness was Vithal Ramchandra, aged about 35, Hindu, Brahmin, Police Sub-Inspector, C.I.D., Poona, who deposed as follows:—

Three of the accused Mahomed Ali, Shaukat Ali and Kitchlew had come to Poona on 17th July 1921. There was a political meeting that evening. I attended it. I write shorthand in Marathi and English. I am accustomed to taking down speeches in short hand. Shaukat Ali made speeches at that meeting; at the end of the meeting, funds were being collected. Shaukat Ali spoke in English and Urdu. I took English in English and Urdu in Marathi short hand. I made a true transcript of my short hand into long hand. I made it half an hour afterwards. Ex. 65 is what Shaukat Ali said. I made a translation into English, Ex. 66. There were 3,000 or 4,000 persons present. About half were Mahomedans. There are many Indian troops stationed at Poona. I can produce my original shorthand notes when required.

NARAYAN GANESH'S EVIDENCE.

The nineteenth witness was Narayen Ganesh, aged about 38, Hindu, Mahratta, Brahmin, Inspector, Police, C.I.D., Poona, who deposed as follows :—

I was present at Gokin at Belgaum District. Khilafat Conference was held. Only one Resolution was put before that Conference. Accused No. 1 proposed it. It was read out in Urdu, then in English. I took down what I could. I write Marathi short hand. I took down the Resolution when it was read in Urdu. I translated it into Marathi and took it in Marathi shorthand. I took it in English longhand. A few remarks were made by accused No. 1 while moving the Resolution. I took it in Marathi shorthand. I have prepared a transcript Ex. Nos. 68 and 69. About 1,500 persons were present. 50 % were Mahomedans. Kitchlew, accused 3, seconded that Resolution. I have the original shorthand notes with me from which the transcript was made.

The Court then rose for the day.

THIRD DAY'S PROCEEDINGS.

WEDNESDAY, 26th OCTOBER.

The accused leaders entered the Khalikdina Hall at 10-55 a.m. and straight away sat on the ground as on the previous day. This day, however, a large majority of the audience sat on the floor out of respect for the accused.

PHULCHAND'S EVIDENCE.

The twentieth witness Phulchand Purnamchand, aged about 37, Hindu, Marwari, S. I. Police, Poona, was then called. He deposed as follows :—

I attended the Belgaum Khilafat Conference at Gokak. That was on 19 June last. Only one Resolution was put before that Conference. The Resolution was read out to the audience by Mahomed Ali. He read it out in Urdu and English. I took the Resolution down. I took down in Marathi shorthand. I have prepared a true transcript in long hand, Exs. 71 and 72. Mahomed Ali proposed the Resolution. It was seconded by No. 3. About 1,500 attended the Conference.

W. C. SHANKER'S EVIDENCE.

The twenty-first witness was William Cristopher Shanker, aged about 25, Protestant, Jailor of Vizigapatam Jail, who deposed as follows :—

Accused No. 1 was brought to my jail on 14th September about 2-40 p.m. The D. I. G. of the C. I. D. and the railway police brought him there. Mr. Cunningham brought him. The Jail is about one and a half miles from the station, he came in a motor. His kit followed in another motor accompanied by his servant and a policeman. The Inspector asked me to keep the kit safely till he got an order. I locked up the kit in my office. Next day the Inspector turned up with a letter addressed to the Jail Superintendent asking me to search the kit and take possession of all papers. I suggested Mahomed Ali should be present. I sent for Mahomed Ali and in his presence opened his trunk. Several papers were found which were placed on the table. I had a list made out by the Deputy Jailor. I read the English papers and asked Mahomed Ali to read the Urdu papers and tell us the contents of them. The contents were noted by the Deputy Jailor. The list was then signed by Mahomed Ali Ex. 74, among them were the Urdu and English copies of Gokak Resolution. I then put away the papers and the list. I took

them out on the morning of the 17th. The District Magistrate called on the jail and I placed these papers before him on the table. Mahomed Ali was sent for and the D. M. informed him that they were to be seized. Mahomed Ali asked that certain papers which were in that bundle should be sent to Begum Mahomed Ali. Papers were then wrapped in a newspaper and sealed by the D. M. The packet was handed over to an Inspector of the C. I. D. who called at the jail. I was more or less present at the conversation between the D. M. and the accused.

NARIMAN'S EVIDENCE.

The twenty-second witness was Nariman Hormusji, aged about 29, Parsi, Jailor, District Jail, Karachi, who deposed as follows :—

Accused was kept in a separate room in the jail. He has written some letters in my presence to the D.M., Karachi, Exs. 10 and 11. He also wrote two telegrams in my presence, Exs. 12 and 13. I kept the originals and despatched the copies. Accused 1 also wrote an Urdu letter in my presence, Ex. 9. I initialled these documents, so I might identify them.

The P. P. said that he wanted to examine Deputy Superintendent of Sylhet. Mr. Sundera Nath Sen who was not examined in the Lower Court but part of whose statement was given to the accused on Saturday and a part on Monday.

M. Mahomed Ali asked if the evidence had already been recorded. The Judge said that it was going to be taken.

M. Mahomed Ali said that new witnesses were being brought in every now and then to serve the purpose of the P. P. He said that it was being done only in order to show that the "conspiracy" existed from February 1920. There was not a word of evidence in the Lower Court about dates but any how the Magistrate introduced his own dates February to September, 1921. The Public Prosecutor, he said, again wanted to have "slight" changes in the charge sheet and now to prove his own things, new evidences were being taken. "It will facilitate the proceedings if the sentence is passed. We will have no objection, we have no grudge against the Court. It will be better if there is an end to these things."

The P. P. said—"The witness's name was in the first application to the Court to summon him because he would produce the notes of Mahomed Ali's speech in March 1920. Unfortunately, he could not arrive in time in the Lower Court." The Judge allowed the evidence to be taken.

SUNDER NATH'S EVIDENCE.

The twenty-third witness was Sunder Nath Sen, aged about 42, Hindu-Baddha, Deputy Superintendent, C. I. D., Sylhet, who deposed as follows:—

I attended the Assam Khilafat Conference in March 1920, on the 6th March. The accused 7 was present. He delivered a speech at the Conference. I took notes of it, he asked some Resolutions to be passed. Abdul Hamid read out the Resolutions. Shaukat Ali asked him to read them out. Those Resolutions had been passed on the 29th February in the Town Hall, Calcutta. I attended that Conference in Town Hall, Calcutta. The Resolutions which were passed in the Town Hall, Calcutta, were published in the "Amrita Bazar Patrika" and other newspapers. Accused 7 handed Abdul Hamid that copy of the "Amrita Bazar Patrika" and asked him to read out the Resolutions, they were in English. They were read out in English and Urdu. I had a copy of the same paper. I checked the reading and translation; they were correctly read out. I have not my original notes made in the meeting. I made a fair copy. That was in the evening. I made it with my own hand. I have it with me, Ex. 77. I saw Shaukat Ali in Calcutta at the time of the Conference there in February.

B. E. GWYER'S EVIDENCE.

The twenty-fourth witness was Bernard Edward Gwyer, aged about 42, Church of England, Colonel on the Staff of Western Command, Karachi, who deposed as follows:—

Ex. No. 79 is the form on which soldiers are enlisted. Clause 14 has 2 paras. Para 2 refers only to Reservists. Ex. No. 80 is the enrolment form of soldiers enlisted during the period of War. All soldiers now serving have been enlisted under one or the other of these forms. Soldiers are not allowed to go till a definite period has elapsed. I cannot say whether they are allowed to buy their discharge. The people enlisted under Form Ex. 80 have to serve during the duration of the War and for 6 months thereafter. The date of the end of the war was fixed for 1st September. The people enlisted under Form 79 have to serve for 4 years or 5 or for 10. He cannot leave the Army before the period he had engaged for is over. He may receive his discharge after his period of service is over on 2 conditions, namely, that War is not existent or imminent, and that the Unit to which he belongs is not 10 per cent. below its Establishment, Squadron or Company. These two conditions appear in Para 1, clause 14 of Ex. 79.

When necessary a recruiting party is sent out to the area whence recruits are drawn. They consist of men of Regiment under command of an officer Indian or British. The object is to induce men to enlist in the Army. That is the only method of keeping the regiment up to strength. If the men in the recruiting detachments did not do their best to induce men to join, it would be impossible to get them.

If a Commissioned Officer wishes to resign he would tender his resignation to the Company who would submit it to the Commander-in-Chief who would give or refuse permission to resign. Except with such a permission an Indian Officer cannot resign. I am Colonel on the Staff of the Western Command.

I have received some leaflets asking soldiers not to serve in the Army. I produced such leaflets in the Lower Court ; Ex. 81 a, b, c translation 52. They are in the same state as when I got them. I have received other copies in addition to these three. They have reached 10 different battalions of the Western Command.

M. Md. Ali who was examining the leaflet which he had taken from Court said :—Am I to understand that the leaflets are put in by the witness ?

P.:—Yes.

M. Md. Ali :—I should like to draw the attention of the Court to a misquotation of the Quran. Then he read the passage in Arabic pointing out the discrepancy. He further pointed out that it was a misrepresentation of the Quran which the army had got. He read out a passage regarding the punishment to be awarded to one who killed a believer. The punishment was to be meted out to the *singular* 'man' while the reprint contained the *plural*. This he said was Mr. Mahmud's translation !

He cited another mistake also in the leaflet, at the instance of Pir Ghulam Mujaddid and others.

The witness continued :—I have received a telegram from O. C. 98th Infantry at Baroda to the effect that Subedar Major Jiram is on sick leave. Ex. 82. I then telegraphed to the Deputy Commissioner, Girgaon, if he was fit to travel and if not to send me affidavit. I received the reply Ex. 83. The affidavit has not been received. I will send it

when received. There is no provision for the resignation of sepoys of Military service before the period has elapsed for which they have signed on even on payment. I have just looked up the point.

AZIZUDIN'S EVIDENCE.

The twenty-fifth witness was Azizudin Sharafudin, aged about 35 years, Musalman by caste, Jat, Subedar, 5th Light Infantry, Quetta, who deposed as follows :—

On the first June last the Subedar Major of my Regiment went on leave. For 2 months I acted for him. The Post of the Regiment was censored during those months. I found 10 such leaflets in the post of my Regiment during those 2 months. Some of them were received on 20th July and others during the last week of July. I have produced one of these leaflets Ex. 85. It is in the original envelope. They were addressed to the Mahomedan Subedars of the Regiment. There are one Company of Punjabi Mahomedans and one Company of U. P. Mahomedan Rajputs. They are not likely to pay very much attention to this sort of leaflets. They would pay no attention to the opinion of Mahatma Gandhi or of a Hindu Bawa like accused 6.

MAHOMED HUSSEIN'S EVIDENCE.

The twenty-sixth witness was Mahomed Hussein Turvesk Ali, aged about 45 years, Musalman, Hazara, Subedar, 106 Hazaras, Quetta, who deposed as follows :—

My Company was attached to the second Pioneers at Lahore. My Regiment was in Mesopotamia. My Company was sent to the Depot in Quetta in December 1920. I received this paper Ex. 87 in that envelope. I received five more a week later. Four of them were addressed to four Subedars of my Regiment who had been demobilised and one to a Jamadar of my Company. I opened the envelopes as I was on duty that week.

After the evidence of the last witness was finished, the Serishtedar read the deposition of Jairam, Subedar, as recorded in the Lower Court to the Jurors as the witness had been unable to attend the Court on account of illness.

At this stage the Judge said :—I do not think any of the statements (of the accused) in the Lower Court are admissible. They are no statements at all. I do not think whether statements of a compromising character could be admitted. The object of the statements is to enable the accused to explain anything in the evidence against them.

Mr. Mahomed Ali, after ascertaining from the Court whether it would hear him on the question, said :—My statement is nothing but an explanation of things in the evidence led against me. The facts alleged against me are that I read out a certain resolution at the Conference and that I introduced it with some preliminary remarks, that I recommended people in favour of it to show their consent by standing up and that I made certain concluding remarks. That is practically the whole charge. Well, the accused says that was precisely the requirement of his religious law. His faith required him to carry it out and the Queen's Proclamation confirmed by the Proclamation of King Edward and the letter of King George give him the protection of the law for doing what his religion requires him to do. This is our explanation for our passing that resolution. So far as we are concerned, we have given this explanation. As a matter of fact, in an ordinary case, I would not have taken the trouble of giving my explanation or worried the Court with a statement. But here it was a matter of the utmost importance to the Government itself if not to anybody else. Let this Court once for all lay it down clearly that the Proclamation of the Queen Victoria, confirmed by the Proclamation of the King Edward and that published in the name of King George have no value when a man is brought to a Court of Law. They promised us the protection of the law, otherwise they have no value. But let the Court say that they have no value for the Court, they have no value for the jury and I shall be content. I want a clear decision from this Court. It is a statement wholly relating to the facts alleged against us.

The Court :—The object of the statements should be to explain matters.

M. Md. Ali:— We have explained nothing but the bare charge. What is after all the charge ?

The Court was inclined here to interrupt.

M. Md. Ali : If the Court allows me to say something that I have to say, I shall speak. Otherwise I will stop. The charge against me so far

as I am concerned, at any rate, is that I made certain remarks—introductory remarks and concluding remarks. My contention is that my religion required this and I have given citations from the Holy Quran and from the Hadiths in proof of that—lengthy or elaborate,—whatever you may consider it to be. It was only an explanation of the facts alleged against us. Every word of it has its bearing upon the case. From the Proclamation of Queen Victoria and the Proclamation of the late King Edward and the letter of King George, we believed, that the law was to give protection to religion, and I was free to do what my religion required me to do. One single word,—not one single syllable, not one comma is out of place in that explanation. Let it be ruled out if you like, let the whole Quran be ruled out, let the Proclamations be ruled out, and let there be only the Penal Code and let the Penal Code be our new scripture.

The Court :— I cannot turn this trial into a religious discussion. I am not competent to discuss your religion.

M. Md. Ali:—Then you had better resign and let them bring in somebody else who is more competent than yourself (Laughter). My contention is that I am required by your law—your law requires me to act in a particular manner, to do certain things and omit to do certain other things. So long as religion allows it, it is possible for me to keep my allegiance to the King's law and follow his law. But if the King's law is going against my religion, I walk out of my allegiance to him.

The Court :—Assuming that one of the sects of the Hindus regards human sacrifices as a religion, should they be allowed to do so ? .

M. Md. Ali:—If the recognised law of a religion is that one should be permitted to kill then why should the King make such a proclamation ? He should clearly proclaim that the law will not protect such a person or sect. In the case of my religion there is no such commandment. It is all contained in the Quran, although a very small book full of repetitions, and I am to follow its injunctions if I want to remain a Mussalman.

From the Quran originates all the religious authority in Islam and if we follow it then we come in under the protection of the proclamations. Everything is contained in this small book (showing the Holy Quran). All other religious books of Islam derive their authority from the Quran. Not even a tradition of the Prophet can be valid if it goes against the

Quran and Ilm-i-Kalam (scholastics) and *Figh* (jurisprudence) all derive their authority from these two sources. And all these authorities require me to do what I did.

Had not religious toleration been proclaimed by the proclamation of the Queen in 1858, the Queen would not have been recognised by a single Hindu or by a single Christian or by a single Mahomedan. We could come in only as Mussalmans just as we are and with this little book of ours (showing the Quran). If the Quran had no use for us, the Queen could have said: "Gentlemen, you are welcome but not with that book" and we would have remained in the faith. But the Queen wanted us, just as we were, even inspite of this book. And what about the Queen herself? She has to go before the Archbishop of Canterbury and to declare that she was a Protestant and would continue to remain so and to be the Defender of that Faith. And as long as she remains Protestant and defends that Faith, you will abide by your allegiance to her or otherwise her head would be chopped off as the head of Charles I was chopped off. His son had to go on his travels and did not like to go on his travels again when he was King. Another son James II had to leave the country and its Government and his true successors were called Pretenders because the people insisted on the oath of allegiance to be taken by the Kings.

I want to know clearly whether the King to-day is as King, the Defender of the Faith, or a Pretender. If so, why does he not say so that he wants us to discard the religion of the Quran or otherwise "you" cannot remain within my Empire.

The Court:—But you will want to cut off the hand of every thief according to your Quran!

M. Md. Ali:—I am afraid the Court does not understand Islamic law. The hand of the thief will be cut by every Islamic administration. That is the requirement imposed on it by Islam. The moment there is an Islamic administration anywhere, I will ask it to cut off the thief's hand and what is more I will ask them to stone the adulterer to death, whereas in your country, adultery is not even a crime! According to our religious injunctions, the adulterer, if we had the power, would be sentenced to be stoned to death.

My law is this that no soldier shall be asked to kill another Muslim unless for a just cause—a just cause according to my religious law. If the King accepts me as a subject as I am, with all this law, and I come in. Ask me to go against this law, I walk out of the Empire or kick you out of it. This is my only argument.”

The Court then passed an order allowing the statements of the Lower Court to be read to the Jury. The Sherishtedar began to read Moulana Mahomed Ali's statement and when the Court rose it was not finished.

After the Court re-assembled at 3 p.m. the Sherishtedar continued reading the statement of all the accused whatever had been recorded by the Magistrate along with his notes [Published verbatim in the “Historic Trial” Part I] and finished it by about 3-45 p.m. The Judge then began the examination of the accused.

EXAMINATION OF THE ACCUSED.

The examination of Mr. Mahomed Ali by the Judge then began :—

Q.—Is your statement Ex. 90 correct ?

A.—I don't know.

Q :—Did you move the resolution Ex. 3 ?

A :—No. But I introduced it or a similar resolution. It was proposed by accused No. 2.

Q :—Did you approve of that resolution in your introductory speech ?

A :—I said it was the marrow of the Conference.

Q :—Did you believe that the resolution if passed would be published ?

A :—Yes.

Q :—Did you expect that copies of that resolution would reach the Indian troops ?

A :—I thought it was possible that some copies might reach them though they are very badly segregated.

Q :—Did you expect that the resolutions of the Khilafat Conference would have much effect on the troops ?

A :—I feared they were so demoralised by the Government that it would not produce much effect as fifty years ago but I hoped it would produce some and I am glad to see that it has produced some.

Q :—Is there any truth in the idea that you and other accused agreed together to seduce the soldiers ?

A :—No, we never discussed it at any time. But as a conscientious Moslem, I and the other 5 accused must feel together that this is our duty to feel that Muslims must not continue in the army in the circumstances actually existing at the time.

After Mr. Mahomed Ali had signed the above statement he wanted to give a statement as promised, but the Judge refused to allow him any statement except an address to jurors which was not to be recorded. The Maulana very much insisted on the promise of Court being kept up and

the Public Prosecutor also drew the attention of the Judge to Section 342 of Cr. P. C. to the effect that a statement on evidence but not a general address, was allowed but the Judge refused to listen.

M.—Am I allowed to make no statement at this stage?

J.—No.

The Court then asked Maulana Hussain Ahmed if he was ready to answer to questions of the Court but he said:—As my statement is not to be taken I do not want to say anything.

The Court asked Dr. Kitchlew:—“Will you answer the questions please”?

Dr. K:—Under what circumstances should I answer questions? Will I get an opportunity of making a statement? If not, I will not answer any questions. These proceedings are all against law and therefore illegal.

Pir Mujaddid and Maulvi Nisar Ahmed also gave the same answer as Maulana Hussain Ahmed.

The Judge then asked Shri Shankaracharya:—

Q:—Did you support this resolution at the Karachi Conference?

A:—We did not know the details till after coming to the Karachi jail. We did not even know that there was any military question raised in the agenda at the time of the Conference. The first time we heard of it was when we got there. All we did was to give our ecclesiastical support to Hindu-Muslim unity and to the protection of the Khilafat. Had we known that it was on the agenda, we should have said that it was the duty of Mahomedans to follow their religious law accurately, just as it is the duty of Hindus to do so.

Jagatguru Shankaracharya on being asked if he would sign the statement recorded by the Court as above said he refused to sign.

The Court then asked Maulana Shaukat Ali if he would answer the question.

Maulana Shaukat Ali said:—“I am perfectly willing to oblige the Court if you give me a solemn promise to give me a chance to explain my position.” The Court refused to accept the terms and Maulana refused to answer (laughter in Court).

The Khalikdina Hall.

Barbed wires behind the Compound Wall.



View from the Front.



View from the North-West.

The case for prosecution having been brought to a close, the Court asked the accused persons to enter upon their defence and to produce evidence. They all said they did not want to call evidence.

Mr. Mahomed Ali :—I am not going to give any defence but only an address to the jury as my statement has not been admitted which, I consider to be illegal, perfectly illegal.

Maulana Hussain Ahmed said that he would not give any defence.

Dr. Kitchlew said that he had to give defence to God and the nation only. **Pir Mujadid** and **Maulvi Nisar Ahmed** also did not offer any defence.

The Jagad Guru:—There is no evidence against us and we do not want to give any defence.

Maulana Shaukat Ali :—I would have given Quran as my defence but as this Court has nothing to do with God, I give no defence.

Towards the close the Court called the Public Prosecutor to state how he would proceed the next day in his leading of the charges against the accused. Upon his doing so Mr. Mahomed Ali raised an objection as to the misjoinder of charges against them and quoted Section 239 of the Criminal Procedure Code on the point. He pointed out to the Court the definition of the phrase "the same translation" for which they were being jointly tried and urged that the Public Prosecutor should have the action made of the several accused as a joint transaction for which they have been jointly tried.

The Court then rose for the day at 5-50 p.m.

FOURTH DAY'S PROCEEDINGS.

THURSDAY, 27TH OCTOBER 1921.

The Court assembled at 11 a.m; the trial was more largely attended by the public than on previous days.

P. P. :—I would like to draw your attention to exhibit No. 36 evidence of Mr. Teekchand. Witness stated that he took down translation from "New Times." That was a special Sunday bulletin of "New Times."

M. Mahomed Ali :—May I say that P. P. should speak louder so that we may hear him.

Judge read out what P. P. said.

M. Mahomed Ali :—Is that by way of corrigenda ?

Judge :—No.

M. Mahomed Ali :—This addition is being done so often.

PUBLIC PROSECUTOR'S ADDRESS TO JURY.

The Public Prosecutor then delivered his address to the Jury.

The following is the authorised summary of his address :—

You have the charges before you. I will deal with each in turn. Please excuse me if I travel over some of the same ground as I touched on when opening.

Let us read the 1st charge. You will remember that Sec. 131 I. P. C. renders it a criminal offence to *attempt* to seduce an Officer or soldier from his duty.

The mere *attempt* is sufficient to complete the offence. Even though the attempt fails, the person, who makes the attempt, is guilty under Sec. 131, I. P. C. [Read Sec. 131.]

You will remember that a bare agreement to commit an offence is sufficient even though the agreement is only momentary—even for one minute and even though *no* action *whatever* is ever taken in pursuance of the Agreement, still anyone who agreed for *one moment to commit* that offence is guilty of criminal conspiracy. [Read Sec. 120 A.]

You will remember also that the ultimate object of the conspiracy is *immaterial* and *irrelevant* [read explanation]. It is immaterial that the committing of an offence was merely incidental to the *ultimate object* of the conspiracy. This is a point of *law* on which you must *accept* the ruling of the learned Judge. The Court will lay it down for you that it is *immaterial* that the Accused may have acted from religious motives.

Religion is revealed. One man interprets the Holy Scriptures in one way, others equally devout and earnest hold directly contrary views. Verses and even parts of verses may be detached from their context or may be taken in conjunction with other verses in *different* ways by one party or the other, so that there exist acute differences of belief amongst the followers of practically every religion in the World, giving rise to numerous sects within one and the same religion, a fact with which you as men of the World are well aware.

You have Protestants and Roman Catholic Christians, Sunni and Shiah Mahomedans, Pirai and Punjabi Khojas, just as you have Mahomedans who believe in the maintenance of the Temporal Power of the Sultan of Turkey as the Caliph of Islam and those who hold contrary views. The Accused interpret certain verses of the Holy Quran as forbidding one Mahomedan killing another even in a state of War. Many other Mahomedans who are equally devout recognise War as an exception to these texts. Throughout the late War, Mahomedans enlisted knowing they would probably have to fight against Mahomedans. In fact every Mahomedan in the Army, including those who enlisted before or after the War, were liable at any time to have to fight against Mahomedans on the Frontier. Had the texts to which the Accused refer been universally interpreted as the Accused interpret them, they would have come into prominence long ago and must have seriously affected recruiting. The 6th of the 10 Commandments of the Christians and the Jews is even wider than these verses quoted by the Accused, for it prohibits killing generally without any limitation regarding one's co-religionists, but killing in War, in self-defence or as a punishment for crime are generally accepted exceptions to this Commandment. Mr. Mahomed Ali admitted this last exception as applying even to the verses he quotes, admitting that a Muslim King ought to kill a Muslim caught in adultery. Apparently, however, he denies that War is an exception to what those verses enjoin.

It is not possible for this or any Court on earth to decide which sect is right. It is not possible for you or any Court to decide whether the beliefs held by the Accused are correct or those held by others. The

Accused are at liberty to hold any beliefs they like, but they cannot commit crimes in the name of religion. Human sacrifices to the Goddess Kali—to which the Court referred—are none the less criminal because they are acts done in the *bona fide* belief that the killer believes his religion requires him to take human life as a sacrifice. In order to be consistent, when asked yesterday by the Court, Accused 1 had to admit that according to him under the Proclamations of H. M. Queen Victoria, King Edward VII and King George V, human sacrifice should be permitted. If his children were taken and actually sacrificed to the Goddess Kali, would Mr. Mahomed Ali for one moment consider the murderer should go unpunished?

Take another instance—a hypothetical instance. If the principle upon which the Accused say they are acting is true, it must provide the same logical conclusion in every case. Are forcible conversions to Islam permissible? The Accused *may* say that *they* believe forcible conversion is contrary to the Law of Islam. That is beside the point. The fanatics who forcibly convert Hindus to Islam *they* believe that they are doing God service and the Accused say that every man is free to do what *he* believes his religion requires. The religious beliefs of the victims are immaterial. The practical result of this doctrine of the Accused in this instance would be to deny even liberty of belief to the victims. *The principle for which the Accused are contending means* that, if a man believes his religion requires it, he may commit murder, dacoity, robbery, arson, rape and every other offence known to law with impunity.

Are you prepared to hold that if a man murders you, or even forcibly converts you to Islam, he should *not* be punished if he believes that his religion requires him to murder you or forcibly compel you to accept the religion of Islam? Such a proposition would necessarily put an end to any safety of life, property and even of the religion of each one of us.

If some non-Muslims demolished a Mosque honestly believing that their religion required it, would the Accused say that these non-Muslims should go unpunished? Never!

In short, you may hold any religious beliefs you like, as laid down in the Proclamations of H. M. Queen Victoria, King Edward VII and King George V, to which Accused 1 has referred, but you *cannot* commit crimes because *you* think your religion requires you to commit crimes.

It is of the utmost importance that you should grasp this fully and bear it in mind throughout the case.

There is absolute freedom of faith, but no license or permit to commit crimes in the name of religion.

The Explanation to Sec. 120 A of the I. P. C. covers this point. The learned Judge will direct you on the law and you must accept the law as laid down by him and in accordance with your oath return a *true* verdict according to the *evidence*.

Read the first 2 charges—both charge the Accused with *agreeing* to seduce Officers and soldiers. The 1st charge is the *mere* agreement, *nothing* more—the second charge is the agreement being *followed* by an actual *attempt* to seduce Officers.

The Court asked one of the Indian Officers whether he thought Mahomedan Officers were likely to be seduced by these leaflets and he said it was unlikely that they would be affected but whether or not the attempt is likely to be successful is quite immaterial.

Now the *duty* from which it is alleged the Accused agreed to attempt to seduce the Officers and soldiers is two fold—*both* are mentioned in the Resolutions.

Firstly, they attempted to seduce them from remaining in the Army. Col. Gwyer has told you no Indian Officer can resign his commission without the permission of the Commander-in-Chief. No soldier can leave until he has completed the period of service for which he signed on and even then not if his unit is 10% below strength, or if war is existing or imminent.

The War ended officially on 1-9-21. When the Resolutions were passed and all other acts done *no* soldier in the Army could resign 6 months after end of War.

[The P. P. here referred to Exhibit 79, clause 14, para 1. Exhibit 80]

Secondly, the accused attempted to seduce Officers and men from doing *recruiting* duty.

It is impossible to keep the Army up to strength, *unless* Officers and men induce others to enlist.

These are the 2 points re : which the Accused have attempted to seduce Officers and soldiers from their duty.

Now re: the evidence—There was no cross-examination. The evidence is unchallenged, and largely admitted. Accused 1 has challenged 1 immaterial item in the evidence of Fateh Bahadur Ex. 45, the Head Constable who saw Accused 1, 3 and 7 on the night of the 9th July, when “this resolution” was passed, return to the Kanyashala at 1-30 a.m. from the Conference. No. 1 has said this is a wanton lie, because subordinate Police *must* put in *some* lie even in the truest case. The Police have *not* lied. Zamanshah has told us that on the 9th the Conference proceedings did not finish until after 1 a.m. and he is corroborated from an entirely independent source namely the “New Times” Reporter—see Ex. 42 the Account of the proceedings of the night of the 9th July. “The *sitting* came to an end at about 1 a.m.”

It takes some few minutes for a crowd of 2,000 to 3,000 to leave the Pandal. The C. I. D. Head Constable who saw the 3 Accused *reach* the Kanyashala at about 1-30 a.m. was therefore speaking the truth and Mr. Mahomed Ali was *wrong*.

One other point Accused 1 challenged and *failed* in. *He* thought that the evidence of the Inspector Abdul Karim of the Madras C. I. D. given in the Lower Court was inconsistent with that of the Waltair Jailer given here. I tendered the Inspector for cross-examination and pointed out that there was no discrepancy whatever. At the request of No. 1 the learned Judge read through the evidence of the Inspector and *agreed* that there was *no* discrepancy whatever and the point was abandoned.

The evidence before you is therefore unshaken in any way—on the contrary the *allegation* of Accused No. 1 on the *one* small point re: which he has attacked the evidence is proved to be *wrong* and the prosecution evidence correct.

Pardon me if I now remind you of the provisions of Sec. 10, Evidence Act.

You will remember that, in order to *prove* the existence of a conspiracy *or* to *prove* that *any one* of the present Accused was a party to that conspiracy, you may take into consideration any act done by any party to the conspiracy in reference to the common intention of the conspiracy at any time after such common intent was 1st entertained by any party to the conspiracy even though the door of that act may be a *complete* stranger to all of the Accused and is acting entirely without the *knowledge* of *any* of the Accused and even though such act was done *before* the Accused joined the conspiracy *or after* he left it.

I would again remind you that conspiracy is a matter of *presumption*. No C. I. D. Officer can *see* the conspirators conferring. They cannot get into the meetings of the "Subjects Committee" even, where the Resolutions are drawn up. [Gave instance 9, S. L. R. 223; read whole case]. Conspiracy held was proved there, though one man did nothing more than accompany his co-conspirator and never even uttered a single word.

Now first as to the existence of a conspiracy—an Agreement to attempt to seduce troops from their duty—leaving aside at present the question whether the Accused or any of them were parties to such an Agreement. What are the facts from which an agreement to commit his offence is to be presumed?

1. The Resolutions in Town Hall, Calcutta, on 29-2-20. Mr. Shaukat Ali was there. He says he has never missed a Khilafat Conference and Sundra Nath Sen saw him in Calcutta.

2. Same Resolutions at Assam Khilafat Conference on 6-3-20. [Read them.]

3. Mr. Shaukat Ali's speech on 6-3-20—read passage.

4. The Fatwa was issued after the 6th September 1920, because it quotes a Resolution of that date. Read the Army passage in the Fatwa and this Resolution of 6-9-20. The Fatwa bears the names of Accused 2 and 5.

5. The Jamat-ul-Ulema Proceedings in November 1920. Read second Resolution, on which Accused 5 spoke, and at end.

6. The Reprinted Fatwa in February 1921. In this there is a further exhortation to Mussalmans not to serve in the Army. It bears the names of Accused 2, 4 and 5.

7. The Bombay Khilafat Committee received 240 copies of Fatwa for distribution in February 1921.

8. 14-2-21. Bombay Khilafat Committee ordered 5,000 copies of Fatwa and proceedings of Jamait-ul-Ulema to be printed—but for some reason, probably because the time was not ripe, did not send the order to the Press. Notice the wording of the Foreword written by Mr. Khatri, a Joint-Secretary of the All-India Khilafat Committee,

Though Mr. Abdul Ghani says he gave these papers for reprinting on his own authority and without the knowledge of the Accused, remember he is really an employee of the Accused's party and you should think twice before accepting extenuating circumstances which, from loyalty to them, he may urge on their behalf. Further he is obviously a co-conspirator with them and *they* are all therefore liable for *his* acts, even though they may have known nothing whatever of them at the time.

9. In February, March, April, May, 1921, the Khilafat Committee distributed the Fatwa *free*, though they charged for most of their literature.

10. 17-6-21 Shaukat Ali at Poona spoke of "Discharged Soldiers Fund."

11. 19-6-21. Gokak Resolution (read).

12. 9-7-21. Karachi Resolution and violent speeches thereon [Read passages emphasising the attempt and intention to seduce].

13. 11-7-21. Shaukat Ali at Naushahro Feroze where he said 'Haram to serve in Army.'

14. 21-7-21. 2,000 copies of the reprinted Fatwa proceedings of the Jamat-ul-Ulema and foreword received by All-India Khilafat Committee and given for distribution.

15. End of July and August. Leaflets sent to troops. (Read para. 5 and verses) N.B. These leaflets are relevant and important evidence according to the Rule laid down in S. 10, Evidence Act, when considering the question we are now dealing with namely the *existence* of a conspiracy.

From all these acts, all this long course of consistent conduct only 2 conclusions are possible. Either the Accused have been *fooling* their ignorant co-religionists, fervently preaching to them the doctrine that it is "haram to serve in the Army" and repeatedly urging them to *act* on this religious commandment, impressing as they did in the Resolution and Speeches at Karachi the absolute duty—the absolute *necessity* for every Mussalman to bring these texts *home* to the Mussalmans in the Army, fooling their ignorant brethren because they never meant a word what they said, or—as they have certainly appeared in Court—they are sincere

men, they sincerely mean what they say and they *want* their hearers to do what they enjoin, they want their hearers to carry this message to every Mussalman in the Army and why? First in order that every Mussalman may leave the Army himself and secondly, in order that every Mussalman may cease to induce others to join, that is, if the Accused are sincere, their *aim* is to attempt to seduce Mahomedan soldiers from their duty. I give the Accused credit for sincerity and I am sure they will maintain that they *were* sincere in what they did and were *not* fooling their ignorant brothers. How do you think in Calcutta, Assam, Gokak and Karachi that all these acts of the Accused which I have placed before you, all these Khilafat Conference Resolutions in Calcutta, Assam, Gokak and Karachi, and all these speeches at public meetings all over the country, the Fatwas, the 2nd Resolution and Speeches thereon in the Jamait-ul-Ulema, the reprinting in Bombay and distribution of the Fatwa and proceedings of the Jamait-ul-Ulema with its emphatic foreword, can you for one moment believe that all of these, uttered and published to emphasise the *one* single theme, were not the acts of men who were acting in agreement? All preach the same idea "it is haram for a Mussalman to remain in the Army." In the face of all these proved acts, all pointing clearly to the same conclusion, you cannot but hold that the men who made these speeches, published these fatwas, etc., gave out and supported these Resolutions did *agree* and that they agreed to attempt to seduce troops from their duty. Conspiracy is nearly always a matter of presumption. Remember the case in 9 S. L. R. at page 223. There a man who did *nothing* was held by his mere presence to have shown he was a co-conspirator with the chief Accused—here each and every Accused has done several acts which associate him clearly with this movement and show that he agreed with others including the present Accused to attempt to seduce Mahomedan soldiers. Remember that acts done by members of the conspiracy other than the Accused are relevant as proving the existence of an Agreement to commit an Offence—and as proving that the Accused or any of them were parties to that Agreement. The prosecution need *not* prove any meeting at all. Here we have proved meeting on a common platform in Karachi in the common cause. I put it to you that a widespread agreement to attempt to seduce Mahomedan soldiers from their duty *must* be presumed from the proved facts of this case.

We will now take the case of each Accused separately to see whether he was a party to this Agreement.

Accused 1. Gokak and Karachi Resolutions. Must have been at Subjects Committee, being a Member of All-India Khilafat Committee and President of the Conference here. See statement to Lower Court and to this Court.

Accused 2. Name on Fatwa—1st and 2nd Edition and proposed Karachi Resolution—see his speech and read passages. See statement to Lower Court and to this Court.

Accused 3. *Seconded* Gokak and Karachi Resolutions. Honorary Secretary of All-India Khilafat Conference, Bombay, and must share responsibility for their acts. As Secretary he must have attended the Subjects Committee which included all members of the All-India Khilafat Committee—see his speech here. See statement to Lower Court and to this Court.

Accused 4. It was not necessary to burden the Record of the Court and take up time by proving the Police Report of his speech. It was not taken down in short-hand and you have the "New Times" Reporter's short report of it. I will read this. This Accused translated the Karachi Resolution into Sindhi and spoke in its support. It was doubtless from No. 4's translation into Sindhi that the Sindhi Reporter of the "New Times" got the words "it is haram to *serve* in the Army," because, as Mr. Zamanshah says, No. 4 translated "remain in the Army" as "foj men Nokari Karn' Haram Ahai." The words I have quoted appear in the "New Times" of the 11th July but do not appear in the later so-called "authentic" copy supplied by Mr. Mahomed Khan, the local Khilafat Secretary, which was published in the issue of 18th July. Mr. Mahomed Khan doubtless intentionally left these words out as being too dangerous to publish. That such words were in the Resolution is proved not only by the 2 short-hand writers, but by the copy of the Gokak Resolution found on and admitted by No. 1. In his speech No. 3 said that the Resolution here was the *same* as at Gokak. Accused 4 also signed 2nd Edition of Fatwa and tells us he had arranged for its republication in Hyderabad. See his statements in both Courts.

Accused No. 5. Name on both editions of Fatwa—also on 2nd Resolution of the Jamait-ul-Ulema as having supported it—spoke strongly at Karachi. Refer to his speech and statement to the Magistrate and this Court.

I will next take the case of Accused 7.

His case is on practically the same footing as that of the other Mahomedan Accused. I propose to take the case of the Hindu Accused No. 6 last, if I may. Now Accused No. 7 arrived on 7-7-21 by Quetta Mail with Nos. 1 and 6. Put up at Kanyashala with Nos. 1 and 3.

Close Association here as in Bombay Khilafat Office. As Secretary of All-India Khilafat Committee was a member of the Subjects Committee. Was seen *going in* at the morning meeting, was heard speaking at it by 3 witnesses and was heard speaking at evening meeting by Mahomed Usman Ghani. He states he was and is in *full* sympathy with the Resolution and only regrets not having spoken on it.

This is borne out by the consistently prominent part No. 7 has taken in this movement.

1. Deputy Superintendent Sundra Nath Sen proves he was in Calcutta at the time of the Khilafat Conference there in February 1920. No. 7 says he has never missed a Khilafat Conference. Similar Resolutions were passed there on 29-2-20. [Read the Resolutions].

2. On 6-3-20 No. 7 was President at the Assam Khilafat Conference, delivered a speech in support of the same idea and had the same Resolutions as at Calcutta put forward and passed. [Read speech].

3. On 17-6-21 Spoke at Poona. [Read speech].

4. 9-7-21 was here at Karachi as noted above. Stood up on dais.

5. 11-7-21 Spoke at Naushahro Feroze where he said: "Haram to serve in the Army."

As Honorary Secretary of Bombay All-India Khilafat Committee, responsible jointly for what was done there—even for the acts of Mr. Abdul Ghani, Mr. Khatri and others done without his knowledge for they also clearly agreed to the same course as No. 7 and their acts done in pursuance of this Agreement are relevant evidence against No. 7 and all others who were parties to this Agreement, all who agreed to this attempt being made to seduce troops from their duty. No possibility as to No. 7 not being in full *agreement* with the others. That is the question. Conspiracy is a long and frightening word—discard it altogether from your minds. Use the simple English equivalent "agreement."

Was not No. 7 acting *in agreement* with other persons in attempting to seduce Mahomedan soldiers from their duty ?

We will now take the case of *Accused No. 6*.

He says he did not know the contents of the Resolution until after his arrest. There can be no possible doubt whatever but that that statement is *untrue*. This Resolution was published by the "New Times" in a special edition brought out on Sunday the 10th, the last day of the Conference (*vide* Tekchand) "Daily Gazette" Reporter, Ex. 36 who says he cribbed his report for the "Daily Gazette" from this Sunday Bulletin.

Accused No. 6, as his speech would show, is a keen political worker—shall we say an agitator—who had heartily espoused the Khilafat cause.

Do you think No. 6 did not read this account of Saturday's proceedings on Sunday? On Monday the 11th it appeared in the "New Times" and in the "Daily Gazette" papers of different political points of view. Do you believe that this most important Resolution was published in *none* of the newspapers which this keen political worker read? It is utterly *impossible*. This Resolution was emphasised by the President of the Conference as being the *essence* of the whole Conference. Accused 6 in the opening words of his speech said of this speech that this Resolution was "one of the *greatest* importance—it is of the greatest importance spiritually and politically." He delivered a long and vigorous speech in support of it. Do you believe for one moment that he was not sufficiently vain to look at the reports of that speech and not sufficiently interested in this 'most important Resolution' to read it in the newspapers? Without a shadow of a doubt he must have read the report of this Resolution and of the speeches on it and he is *not* speaking the truth when he says he saw the Resolution for the *first* time after his arrest in Karachi jail.

Now what are the proved facts against him ?

1. Arrived on 7-7-21 by Quetta Mail with Nos. 1 and 7.

2. Seen by 2 Head Constables going to the Subjects Committee, where it was decided to put this Resolution before the Conference—see Ex. 17. It was *not* a mere repetition of the Gokak Resolution Ex. 7 A it contains more. Ex. 7 A with 17. The Resolution *must* therefore have been discussed at the Subjects Committee and No. 6 *must* have known its contents then.

3. He spoke in support of the Resolution and emphatically urged its unanimous acceptance. He dissented from *no* part of it. He addressed himself more to the *ultimate* object of the conspiracy—the attainment of an Indian Republic—rather than the immediate act, the seducing of Officers and men of the Army from their duty. But although Accused 6 carefully avoided any mention of seducing troops *or* of civil disobedience, yet his speech bears internal evidence that he *knew* the contents of the Resolution to which he was speaking. [The P. P. went through the speech commenting].

4. Although he *must* have seen reports of the Resolution he never at any time dissociated himself from it in *any* way, at any time and even *now* when he pretends that he was ignorant of its terms at the time when he urged its acceptance as “a *most important* resolution of the greatest importance both from the religious and the political point of view,” yet even *now* he does not express any disagreement with what it says—look at his last answer to the Court. This Resolution was not a new thing. It was as old as February 1920 repeated in March 1920, it was the *only* Resolution at Gokak, which No. 1 went to propose and No. 3 from Amritsar went to second and is similar to what this Accused’s co-Accused have publicly preached for nearly 18 months. The Prosecution have put in a full detailed report with the original short-hand notes, so that Accused may get any crumbs of comfort that he can from it. His words, on which the Prosecution rely, were, however, reported in the “New Times” and proved before Accused was committed to the Sessions Court.

The “New Times” Report shows that Accused emphasised that this Report was of *the greatest* importance both from the political and the religious stand-point and that Accused urged the Audience to pass it unanimously.

Can you gentlemen believe that a man of the education and ability of Accused 6 would be so foolish as to get up and emphatically state that a Resolution was of the *very greatest* importance and as to strongly urge a large public audience to accept and pass it unanimously when he did not even know *what* the Resolution was ? Yet, that is what Accused 6 asks of you !

That, gentlemen, is an outline of the part played by each of these Accused.

I first put before you reasons for holding that a widespread agreement to attempt to seduce troops from their duty existed at some time or times between 1st February 1920 and 30th September 1921. I have now shown you from the evidence that each one of the Accused was a party to that conspiracy. There can be no question re: any of the 6 Mahomedan Accused. In their very statements in Court they make their position clear. Regarding the one Hindu Accused, I submit the Prosecution have established his complicity, that he too was a party to this Agreement. Are you prepared to accept his uncorroborated explanation which is in itself a highly improbable one? Are you going to believe that this highly educated and intellectual gentleman impressed the very great importance of the 6th Resolution upon his audience at Karachi and called upon them to pass it unanimously in a light hearted manner, ignorant and utterly callous of the contents of the Resolution? He was either criminally foolish or he is a criminal trying to avoid the punishment for his crime. His education and obvious intelligence lead irresistibly to the latter conclusion.

Apply Sec. 10 of the Evidence Act to this Case. Bear in mind its illustration and the further illustration I gave you of the case reported in 6 S. L. R. There are 2 simple questions for you on this part of the Case.

1. Do all the activities, which the Prosecution have proved, show that there was an *Agreement* between any 2 or more persons to attempt to seduce Mahomedan Officers or soldiers from the Army? That is surely not difficult to answer. The other question will be regarding each Accused individually. "Was each Accused a party to that Agreement at any time between 1st February 1920 and 30th September 1921?"

Re the suggestion of the Court that "perhaps the Accused did not mean business," but only to frighten Government into giving way, theoretically this is possible, but in the light of the proved facts of this case *impossible*.

1. The conduct of the Accused throughout this prolonged campaign has been that of men who were in earnest.

2. The answers of the Accused in Court are *not* that they were bluffing Government, but that they *were* in earnest.

Mr. Mahomed Ali asked if he hoped to reach the soldiers said, he hoped to have *some* effect—he did not say that his intention was to bluff Government.

Neither Accused nor their followers are likely to say they were merely bluffing—they were not in earnest. They have never yet suggested this in any way. God only knows what is in the heart of man—we can only conclude from the proved facts and admissions what the intent was.

If a man, who has proclaimed his hatred and contempt for you, fires a bullet through your hat and, when run in, says I admit I hate and despise you but I only fired at you to see you jump, would you believe him? It would be as impossible as to believe that the Accused were merely bluffing here—a thing they have never even suggested.

2nd charge. This is the only charge on which you are the sole Judges of facts. Please therefore weigh the facts carefully and give them the fullest consideration on this charge in particular. This charge deals with the *completed attempt* made when the leaflets were sent to the troops. The *only* question is were they sent by someone who was in agreement with Accused? Not necessarily the Accused should even know of his existence, much less of his act. The Prosecution have *only* to show that the sender was a member of the conspiracy, that is, that he was working in agreement with the Accused, even meeting is unnecessary (9 S. L. R. 223). Remember the illustration to Section 10 Evidence Act. The intent of the sender of those leaflets *was* to attempt to seduce officers. He was *in agreement* with the Accused—whether or not Accused knew it.

The Fatwa was written and published with an object. The Jam-ait-ul-Ulema 2nd Resolution and Fatwa republished with the *same* object. Resolutions at Gokak and here with the same object. At meeting after meeting these *men* have preached this doctrine and have urged *action*. The 2nd Fatwa urges *action*. The foreword of the All-India Khilafat Committee reprinted by the All-India Khilafat Committee *urges action*.

The Resolution of the 9th July emphasises the duty of all Mussalmans and of the Ulemas in particular to *bring home* these religious commandments to the Mussalmans *in* the Army. These leaflets were bringing those commandments home. They were doing what Accused proclaimed to all Mahomedans, both to those in the Pandal and through the Press to all in India, *should* be done. These leaflets *began* to be sent in the last week of July—can you not presume that their sender *agreed* to what the Accused preached and intended—though he may never have

seen or spoken to the Accused? The message sent broadcast by Accused and other workers in this movement obviously had reached and won over the sender of those leaflets, if he was not *already* in agreement with them.

The whole passage in the Fatwa laying it down that it is "Haram to serve in the Army" has been reprinted in this short leaflet of less than one page. This is the *only* subject discussed in the Fatwa, the *whole* passage regarding which is reprinted in the leaflet. The leaflet merely gives the headings of other subjects. The Fatwa quotes a verse from the Holy Quran and a 'Hadis' in support of its contention that it is 'Haram' to serve in the Army—both the verse and the **Hadis** are quoted both in Arabic and Urdu in the Fatwa and both the verse and the Hadis have been repeated in full in the leaflet, in Arabic as well as in Urdu.

The Accused now allege—after the Prosecution case has been closed—that there are two mistakes in the verse as printed in the leaflet. The language of this Court is English and the leaflet is in vernacular. A translation of it was made by K. B. Mahmud Shah, a Mahomedan gentleman of standing and an expert linguist. He was examined before the Committing Magistrate, in whose Court both the leaflet and his translation of it were filed as Exhibits. You have also had him here as a witness. Now the translation by K. B. Mahmud Shah into English of this verse, as printed in the leaflet, tallies exactly with this Court's translation of the verse as given in the Fatwa. These 2 mistakes in the verse in the leaflet (which the Accused say show that the leaflet must have been written by a barber for 2 pice and not by them) do not appear at all on the Record of this case in English, which, as I have said, is the language of this Court. From the English translations it appears that the verse in the leaflet is word for word the same as the verse in the Fatwa, the correctness of which is admitted. The Accused might have pointed out the mistakes, which they say appear in the verse in the leaflet, when several copies of the leaflet were produced in the Committing Magistrate's Court a month ago. They made lengthy statements to the Committing Magistrate as the Court Record shows. For the past month these copies of the leaflet have been on the Record available for inspection or for copies being taken. Yet even when K. B. Mahmud Shah, who translated the leaflet, was produced as a witness before you here 2 days ago no hint whatever was given, there was not the *slightest* suggestion of the allegation which the Accused now make—after the Prosecution case is closed—to the effect that there are 2 mistakes in the vernacular verse as quoted in the leaflet. Had this been suggested before K. B. Mahmud Shah returned to Mirpur Khas,

or at any time before the Prosecution case closed, it would have been possible for us to have had the point cleared up in evidence on the Record so that you might see whether there is any substance in this allegation which has been raised for the *first* time after the evidence was closed in this Court. You have in evidence the translations of the verse as given in the Fatwa and as given in the leaflet and from these translations, which have not been challenged in any way, it certainly appears that the verse in the leaflet has been taken word for word from the Fatwa. Even if, however, a mistake has crept in somehow into the leaflet, still it is absolutely clear from a comparison of the leaflet and the Fatwa that the one has been copied from the other with the intention of emphasising and bringing into prominence the passage in the Fatwa regarding service in the Army with the intention of putting that point in a nut shell clearly before the troops. Even if there is a mistake in the verse in the leaflet its meaning is clear—as the translation shows. Any Mahomedan Soldier therefore, who read the leaflet could not fail to understand what the writer of the leaflet wanted him to *do* or that the verse quoted in the leaflet was quoted to support the doctrine that it was 'Haram' to serve in the Army.' The alleged mistakes are therefore of no great weight when considering whether the person or persons, who got these leaflets printed and distributed, were acting in agreement with the Accused. The whole evidence in the case, which you are entitled by Section 10 of the Evidence Act to consider in this connection, and in particular a comparison of the leaflet with the Fatwa, raise an exceedingly strong presumption that the person who sent these leaflets to the troops *was*—whether the Accused knew it or not—acting in agreement with them, was a party to the same conspiracy.

Go through Fatwa and compare it with leaflet. No doubt the latter is obviously a summary of the Fatwa, drawn up to carry out the purpose put forward in the 6th Resolution on 9th July 1921 here.

The sender of the leaflets is not before the Court but that is *not* necessary. The only indication of origin that we have are post marks of Allahabad and Cawnpore where the covers appear to have been posted. Mr. Mahomed Ali said in his statement to the Lower Court that he was pleased to see that at last the Jamait-ul-Ulema had sent this leaflet to the troops (see his statement) but at the suggestion of his legal Adviser Mr. Mozumali, whom you have seen assisting the Accused in Court, he withdrew that statement, as noted by the Committing Magistrate. However, you will note that the leaflet states that the Fatwa itself can be obtain-

ed from the Jamait-ul-Ulema Hind, that is from the body to which Accused 2, 4 and 5 belong, who brought out the Fatwa and whose proceedings in November 1920 show their strong views on this subject. The leaflet is practically an *advertisement* of the Fatwa, whose doctrine on the point of service in the Army has been preached with such fervour by the Accused for the last 18 months. From all this it is clear that the sender of these leaflets, whoever he was, was *in agreement* with the Accused. Surely, this is a fair presumption, an irresistible presumption.

Now adopting the principle laid down in S. 10 of the Evidence Act, bearing in mind the words I read to you before but will again repeat from 9 S. L. R., were not *all* the Accused in agreement and was not this leaflet sent by someone who was in agreement with them ? [Read 9 S. L. R. at page 224].

Direct evidence of conspiracy is hardly ever adduced but "unlawful conspiracy is to be inferred from *the conduct* of the parties Chandavar-kar J. in *Emperor vs. Annappa* (2) said that "a conspiracy may be proved by other than oral evidence, it may be proved by the evidence of surrounding circumstances and the conduct of the Accused both before and after the alleged commission of the crime" and cited the case of *Reg. vs. Esdaile* (3) that "there may be conspiracy without overt acts." So also in *Barindra Kumar Ghose vs. Emperor* (4) Jenkins C. J. said "though to establish a charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design."

Note particularly the words of Sir Lawrence Jenkins quoted in that case which I will again repeat: "Though to establish a charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination nor need the parties be brought into each other's presence; the agreement may be *inferred from circumstances*," and apply that principle to this case.

[Read Section 505] There can be no doubt but that Mr. Mahomed Ali used the words attributed to him in this charge as these words appear not only in the notes of both the Urdu short hand writers but also in Mr. Mahomed Ali's own handwriting in the copy of the Gokak Resolution found in his kit when he was arrested. Mr. Shanker, the Jailer of Waltair,

has proved that this copy was found in Mr. Mahomed Ali's kit and Mr. Mahomed Ali admits that this copy is in his handwriting and this is proved by the Government Expert who says the Gokak Resolution is in the same handwriting as the letters which Mr. Damri, the Karachi Jailer, has proved he saw Mr. Mahomed Ali write. Accused 3 in his speech here said that the Resolution here was the same as that proposed at Gokak. No. 3's actual words were:—"This Resolution" (etc. Read from beginning of No. 3's speech). There can be no doubt therefore that Mr. Mahomed Ali used the words he is charged with having used. The next question for your consideration is then whether in making this statement Mr. Mahomed Ali *intended* to cause Mahomedan Officers or soldiers to fail in their duty. The intent of Mr. Mahomed Ali is shown clearly by the very words of the Resolution "it is the *duty* of all Mussalmans to see that these commandments are *brought home* to the Mussalmans in the Army." They can only be *brought home* by approaching the troops, by this message reaching the Army—there *could* only be one object in *bringing* this *home* to the Mussalmans in the Army, namely to cause them to leave it at once, to cause them not to bring in recruits that is to say, to cause them to fail in their duty in the 2 respects re; which Col. Gwyer gave evidence. Even therefore if the statement made by Mr. Mahomed Ali were *true*, (which is not admitted) still it would *not* be protected by the Exception to the Sec. 505 because it was made with *intent* to cause troops to fail in their duty. In judging of the intent of Mr. Mahomed Ali you should also bear in mind the fact that he proposed the Resolution, containing the words mentioned in this charge, previously at Gokak. His statements here in Court also leave doubt as to his *intent*, that he did *intend* that his statement should *cause* Mahomedan Officers and soldiers to fail in their duty. He *meant* every word he said.

4th charge. This is against Accused 2 to 7 under Sec. 109, I. P. C., and alleges that they conspired with Accused 1 that he should commit the offence under S. 505, I. P. C., which is the Subject of the 3rd charge, and that Accused No. 1 committed that offence in pursuance of that conspiracy. You have ample evidence that all the Accused agreed together that Mr. Mahomed Ali should publish that statement to all the people assembled in the Pandal and that they all intended by publishing that statement to cause Mahomedan Officers and soldiers to fail in their duty.

As when considering the 1st charge, here too the fact that the Accused agreed to commit this offence is a matter to be presumed from the proved

circumstances. Now Mr. Mahomed Ali said after concluding his Presidential Address that a Subjects Committee was to be formed to draw up the Resolutions. The members of that Committee must have agreed to this Resolution being put to the Meeting in this form. I have already reminded you that the words emphasising the duty of bringing this injunction home to the troops were not in the Resolution at Gokak, but were added here. This shows the Resolution was apparently discussed at the Subjects Committee and it could hardly fail to have been discussed there for both Mr. Mahomed Ali and Accused 6 strongly emphasised the supreme importance of this Resolution in the Pandal. It is proved that Accused 1, 3, 5 and 7 attended the Subjects Committee. I have already detailed the evidence on this point to you. These 4 must, from their close association here at Karachi, have known that this Resolution was to be proposed and they must have agreed to it. You remember that Accused 1, 6 and 7 arrived at Karachi together, Accused 1, 3 and 7 put up together at the Kanyashala and all 4 took a prominent part in the Conference and as I have said, attended the Subjects Committee. These 4 at least then were in agreement with Mr. Mahomed Ali as regards the publication of the statement.

Accused 4 translated the Resolution into Sindhi, there can be no doubt therefore as to his Agreement. He also spoke strongly on it as the "New Times" report shows. Accused 2, 3 and 5 also delivered very strong speeches in support of this point. Accused 6 urged great importance of this Resolution and begged the audience to pass it unanimously. Accused 7 regrets he did not speak on it, boasts that he was in full sympathy with it and he left the evening after the Resolution was passed at Karachi and repeated the same sentiments at Naushahro Feroze. From all this surely you can only draw the one conclusion namely that *all* the Accused agreed that this statement should be made and that Mr. Mahomed Ali made the public statement mentioned in the charge in pursuance of a conspiracy to which he and all the other Accused were parties, that they *all agreed* that this statement should be published. Sec. 110, I. P. C., requires that the Prosecution also establish the intent of the Accused who were parties to this conspiracy. But you will have no difficulty on that point for it is clear that all of the Accused who agreed to *this* statement being made in this manner *intended*, by giving such wide publicity and emphasis to *this* statement, to *cause* Mahomedan Officers and soldiers in the Army to *fail* in their duty. The *intent* of all the Accused is clear. Their speeches from which I have read passages, leave no room for *any* doubt as to what their

intent was and the wording of the Resolution, the emphasis on the duty of bringing this message *home to all* Mussalmans in the Army shows beyond doubt the meaning of those who agreed to this Resolution being placed before the Conference. If further evidence of intent were needed you are entitled to consider the evidence already discussed on the 1st charge which shows the conduct of the Accused during the last 18 months, how throughout these months these men have, at one time or another, in one way or another tried to bring this message into prominence, have preached it from Assam to Poona, from Gokak to Karachi, have published it in successive Fatwas in Delhi and distributed it in Bombay with only one possible aim, namely that it should *have effect* and the only effect it can reasonably have is to cause Mahomedan Officers and soldiers to fail in their duty. You must consider the case of each Accused separately as to whether he *agreed* to this statement being made and as to whether he *intended* the statement to have the effect which the Prosecution allege.

The 5th charge is against Mahomed Ali under Section 117, I.P.C., namely, that he *instigated* more than 10 persons to commit an offence under Sec. 505 and-or 131, I.P.C. when he called upon all the Mahomedans assembled in the Pandal and all Mahomedans who might read the Resolution in the Press or hear it from others to bring home to the Mahomedans in the Army the message which is the subject of the 3rd charge. (Read the words in the charge.) The words on which this charge is based do not appear in the Gokak Resolution, but are to be found in the copy of the Resolution given to the Editor of the "New Times" by Mr. Mahomed Khan, Secretary of the Khilafat Committee in Karachi as "authentic;" there is no doubt therefore that these words were used here. They appear in the short hand notes of both the Urdu Reporters. The Urdu words have not been challenged by the Accused and may be taken as fully proved. The translation "these religious commandments" has been challenged. An exact literal translation of the Urdu words, whose translation Mr. Mahomed Ali challenges, would have been "the religious commandments about this," but the meaning is the same when you read the context in which the words were used. K. B. Mahmud Shah has accepted the translation of the Karachi Resolution as given in the Order of Government sanctioning this Prosecution. That Translation obviously conveys the true meaning of the Urdu words used.

The words were addressed to a very large number of Mahomedans and to more than 10 Ulemas even as Mr. Zaman Shah's evidence shows

These words clearly incited them to publish a statement which fell within Sec. 505 Indian Penal Code, and by doing so *attempt* to induce soldiers to fail in their duty (Sec. 131). An incitement to either offence under Sec. 505 or 131, Indian Penal Code, is sufficient for the substantive offence under Sec. 117 of abetting more than 10 persons to commit an offence *any* offence *whatever*, but here clearly an offence under Sec. 505 and or 131, Indian Penal Code.

Section 109. This charge is similar to the 4th and alleges that Mr. Mahomed Ali committed the offence mentioned in the 5th charge in pursuance of a conspiracy to which the other Accused were parties. The proof of conspiracy here is the same exactly as on the 4th charge for there can be no doubt that any of the Accused who agreed to the publication of the sentence of the Resolution which is the subject of the 3rd and 4th charges must also have agreed to the publication of the words which are the subject of this charge also, as these words occur in the next sentence to those in the Resolution. (Read it. Referred to and explained "circumstantial proof." Read 7, S. L. R. Isarsing *vs.* Crown remarks on page 112 and explained).

In this case as in nearly every case of conspiracy, the evidence is largely circumstantial and you must draw your deductions from the facts proved and placed before your facts which are surely ample to substantiate the charge which the prosecution bring that these Accused did with others agree to attempt to seduce Mahomedan Officers and soldiers from their duty, that *some one* in pursuance of that Agreement actually made an attempt, by sending these leaflets and that the Accused did agree together to commit also the minor offences under sections 505 and 117, I. P. C.

[Read definition of "Proved" in Evidence Act, and explained it and "benefit" of *reasonable bona fide* doubt].

Remember the points to be decided under each charge. I asked you to note these when I first opened the case.

The 2nd charge is the only one triable by you as a Jury. Under it you have 4 points to decide which I mentioned in my opening Address.

On all the other charges you have only to give your opinions as Assessors. Under the 1st charge you will require to consider the 3 points which I mentioned in my opening Address.

On the other charges the points are clear from the wording of the charge which are in your hands.

For instance on the 3rd charge you must consider whether,

1. Mr. Mahomed Ali made the statement mentioned in this charge.
2. Did he make that statement *intending* to cause Mahomedan Officers or soldiers in the Army to fail in their duty?

Under the 4th charge you must consider :

- (1) Whether any, and if so, *which* of the Accused *agreed* with Mr. Mahomed Ali that he should make that statement.
- (2) Whether those of the Accused who agreed with Mr. Mahomed Ali to make that statement, *intended* thereby to cause Mahomedan Officers or soldiers to fail in their duty, and,
- (3) whether Mr. Mahomed Ali made that statement *in pursuance of that agreement*.

Under the 5th charge you must consider :

- (1) Whether Mr. Mahomed Ali used words having the meaning of those attributed to him in this charge.
- (2) Whether in doing so he did in fact *instigate* more than 10 persons to commit an offence under Sec. 505 and-or 131, Indian Penal Code.

Under the last charge you must consider whether Mr. Mahomed Ali's instigation was in pursuance of *an Agreement* to which any and if so, *which* of the Accused were parties.

I must thank you Gentlemen for the patient hearing you have given me and the intelligent interest you have taken throughout the case and in conclusion I would remind you of the oath you have taken that you "will well and truly try the case submitted to you and return a true verdict according to the evidence." I have taken you through a good deal of the evidence. It is now fresh in your minds and you must remember that you

are to decide the points laid before you according to the *evidence*. I have impressed upon you and without doubt the Court will also tell you that the guilt of the Accused is in no way diminished even if they thought that their Religion required them to do any of the acts with which they are charged.

If you are of opinion that on the evidence it is proved that the Accused did any of the acts with which they are charged, you will be doing violence to the oath you have taken if, in spite of that evidence, you acquit the Accused on account of their religious doctrines or on account of any sentiment. The evidence is simple, brief and clear and, if you will only confine your attention to the proved facts, you will have no difficulty in returning a true verdict on the evidence.

After the Public Prosecutor had finished his address to the Jury, Maulana Mahomed Ali, before addressing the jury, turning to the Court said : Can I have the Jury on this side ? I have not seen their faces yet ? I want to seduce them like the troops (laughter in the Court).

The Court directed the Jurors to change their seats accordingly, and the Judge also changed the position of his seat turning to the left directly facing the accused.

MAULANA MAHOMED ALI'S ADDRESS TO THE JURY.

Maulana Mahomed Ali then amid pin-drop silence addressing the Jury said :—

Gentlemen of the Jury,

I just asked the presiding Judge that he might permit me to see your faces because, with the exception of one of your number, I had not hitherto been able to see your faces. And I also said that I want to seduce the Jury. Of course there was behind that another intention, not the ultimate object perhaps, but incidental to it, as the P. Prosecutor would say. I wanted you to act as screen in front of the ladies now behind you, or the Public Prosecutor may add yet another charge of seduction against me (laughter), but after all I find, that as a result of my effort at seduction I have turned the Judge also towards me to-day (laughter).

Gentlemen, I think I am going to take as much time as I can, so it is necessary to tell you beforehand that if I intended to defend myself or my friends and to escape from transportation for life or the gallows or the jail—I don't know what the Judge has in store for me—it would have been absolutely unpardonable. No, gentlemen, no ; for that purpose I would not have wasted a single moment of your time or of mine.

I do not want any defence. I have no defence to offer. And there is no need of defence, for it is not we who are on trial. It is the Government itself that is on trial. It is the Judge himself who is on trial. It is the whole system of public prosecutions, the entire provisions of the law that are on trial. It is not a question of my defence. It is a very clear issue, and I thanked the Government in the Lower Court, because for the first time it came out into the open and gave us a chance of having a decision on a very clear cut and pointed issue. That very clear cut and pointed issue is this : Is God's law for a British subject to be more important or the King's law—a man's law ? Call him His Majesty or His Imperial Majesty—exalt him as much as you like—show all obedience to him—show him all the loyalty you can—pay him all the respect—entertain even superstitions about him if you like—but the question is—is this respect—are these superstitions going to stand even for the slightest moment in the way of loyalty which every human being owes to God ? Gentlemen, I think not for my own sake, nor for the sake of my co-accused, but I think for you, it is a misfortune that there is not a single Mussalman among you. Three of you are Christians, and two are Hindus. But that does not matter at all. I am speaking to human beings. I am speaking mostly to Indians. I do not know whether all of you are Indians. Perhaps one of you is not, though he too may have his domicile in India and may have come to regard India—although an Englishman—as his home, and may therefore be regarded as an Indian. I am therefore speaking to a majority of you at least who come from a country which is imbued with the spirit of religion and which is traditionally a spiritual country and which has striven through the ages for the exaltation of the spirit as against the flesh.

Gentlemen, we hear so much of toleration in these enlightened days and I do not think even the Public Prosecutor would contradict me if I say that we all want toleration. The British Government has never tired of saying that it is a tolerant Government, and that the British rule is firmly based on toleration. I do not think that the Government of a civilized country in this twentieth century could ever say that it is against

toleration. But what is toleration after all? It is this; as a well-known man said—"Sir, I disagree most heartily with every word of what you have said, but, damn it, I shall fight to the last drop of my blood for your right to say it." *That is toleration.* That is to say, toleration is required for disagreement, it is required where people are not of the same opinion, where people hold very different views) where they have wide differences. Otherwise, there is no necessity for toleration. But the tolerant man tolerates all this and sacrifices everything for the maintenance of tolerance. Now, you might say, a man might hold very foolish opinions—I am sorry many men do—I think the Public Prosecutor for one holds some foolish opinions—and we have yet got to see what kind of opinion the Judge holds that would be after I am silenced—but it is not the question whether a man's judgment is right or wrong—people's judgment may be foolish—the question is this, when any person or a body of persons give you a pledge or freedom to hold your own opinions and act up to them, then I think it is their duty to abide by that pledge.

Now, Gentlemen, what the case is against us, we want the whole world to understand. After all, the result of the decision here will not be confined to the audience in the Hall, or to the few scores of thousands of people in Karachi. It was said that the Resolution that was passed here was not meant for the small body of audience comprising a few Ulemas and a few thousand people, but it was meant for a larger audience. Now this trial too is meant for more than the audience here in this hall, certainly for more than the five of you. It is really meant for the whole world. We want to have our right to get the protection of the law for our religious beliefs and practices recognised. Let the Government be repentant and say that we have seen the error of our ways. (Turning to Mr. Ross Alston) These are the words which my friend Mr. Ross Alston wanted me to say as my last words, and they shall be my last words, but with regard to the action proper for the Government (laughter). But will the Government say that? Is it going to abide by the pledge of Freedom of Faith? Or, would the Government say,—'No, we are powerful, we are strong, we have dreadnoughts, we have aeroplanes, we have all this soldiery, we have machine-guns, we have all this paraphernalia of destruction with us, we command tremendous power, we have beaten the most powerful nation in Europe, though, of course with the help of 26 allies (laughter) and India's men, money and other resources—but that's another story (laughter)—we cannot tolerate your religious opinions and acts.' If they say that, we can understand that. Therefore it is

not for the purpose of defending ourselves but it is to make this issue clear—because, but it is a national issue—nay, more than that it is an issue on which the history of the world to a great extent depends—whether in this civilised century man's word shall be deemed higher than the word of God. The trial is not “Mahomed Ali and six others *vs.* the Crown” but ‘God *vs.* Man.’ This case is therefore between God and man. That is the trial. The whole question is—shall God dominate over man or man shall dominate over God.”

Now, gentlemen, you were here—though it was not intended for you—you happened to be here—when we refused to stand up when the Judge asked us to do so. We have always dissociated ourselves from and repudiated the idea of showing any disrespect to the Judge. We are not foolish enough to create any unnecessary unpleasantness or to worry the Judge or irritate him. We have no grudge against him. But the whole question was with regard to respect to a man as against respect to God. As my brother has said in the Lower Court, and as I say before you now, we do not recognise the King any longer as our King—we do not owe any loyalty to any man who denies our right to be loyal to God. I have not a word to say against the King—I have not a word against the Royal family, but where the question of God comes in as against the Government, I cannot have any respect for a Government when that Government demands from me that I must not first respect God and His laws. Therefore the whole question really is, as I have said, between God and man. The Public Prosecutor has very skilfully stated his case and when he came to our religious beliefs and the commandments of God, he was anxious to get over it as quickly as possible. He was skating over thin ice. He brushed all that aside. Now I challenge him, I challenge the Judge to give a decision on the point. It is not at all a question of fact with which you, gentlemen of the Jury, have to deal. If the Judge deals with the question of law in his summing up and sentences us, if the verdict of the Jury goes against us in the case, in which you act as Jurors, and if he exercises his right as a Judge to decide both as regards the facts and the law in the cases in which you act merely as assessors, after you give your opinion as assessors—if he sentences us disregarding our religious obligations, then our course will be clear. It does not matter what punishment we are likely to get and under what section of the Penal Code we get it, as there are any number of sections—Secs. 120 B, 131, 109, 505, 117 and so on.

As regards these sections and the various charges, so far as I am concerned, I was greatly confused, and I am trying to compute how many years altogether I shall get (laughter). I have but one life and I do not know if it can cover the many years that I shall get if I am punished according to my deserts (laughter). But that is absolutely immaterial.

The whole thing is this: I want a decision from the Court on behalf of this Government that the Courts of India cannot give any protection to a man who does the thing that I have done though it admits that it is precisely the thing that his religion demands—his God demands from him. God is not clamouring from the house-top. He is shouting from his eternally high throne—clamouring from there—“Man whom I have created from just a clot of blood, whom I have raised to whatever of power and glory you possess—whatever you have and whatever you are, it is I who gave it to you and made all this for you—I *want you to serve Me and not a creature of Mine.*” Whatever respect I may have for the King, I may not bow before him when he asks not to bow before my God and His commandments.

The Judge had hinted something about the beliefs of some sects. He said—suppose a sect of Hindus demands Human sacrifice. I do not know if any religion in India demands human sacrifice. It is not a question of individual belief that was involved in our case. Then the P. P. had said that we had different sects among ourselves. We quarrelled among ourselves as to which of these is right and which is wrong. Well, it is not a question of : which sect is right. Do we know which religion is right and which religion is wrong ? In this it is not a question of our belief alone, it is the question of the belief of every Muslim. But even if it was a case of a particular sect, do you mean to say that the Proclamation of the Queen in 1858 required at that time that each and every one of the 300 millions of the people of India must be agreed all the heavens and the whole earth and all the planets and the Man in the Moon and all the men in Mars—every one must be agreed that this was the one true and correct faith and it was then that the Queen’s Proclamation provided protection ? No protection would have been required for such a Faith. What is the Penal Code itself for ? It is to give you the protection that I seek—that I may not hurt your religious feelings. In to-day’s “New Times” we find that some men, Khilafat men—have been prosecuted in Calcutta because they hurt the religious feelings of a *Policeman*, (laughter) gentlemen of a policeman—by asking him to resign Government service

(Laughter). I have not the least doubt that these men will be condemned. But you see there is a provision of law even for protecting a policeman's religious feelings. Take another case. A little piece of stone which some men worship and worship with full intensity with as much intensity as my own when I say my prayers possibly with greater intensity than mine—you do not approve of it—you heartily disapprove of it, and want to remove it. But can you do it? You cannot. The law gives the man who worships it its protection. Why does it do so? It is not because the man's religion is good but because of the man's feelings. Because the framers of the law say that it is not good religion that they seek to protect but it is the man's religious feelings. It is not the objective religion but the subjective feelings of the man too that have to be protected. It is this that Lord Macaulay and others sought to protect—the religious feelings of a brother man, however foolish and superstitious and wrong they may be. It is this that you have got to protect, and the law provides this protection. But I base my case upon the Queen's Proclamation and the King's Proclamation. So the Judge has got to declare whether these Proclamations have any value in a law Court or not. That picture (pointing to the picture of King Edward VII) is there to remind the Judge that he has to give us the protection of the King's law. You will take that law from him because you cannot either take the law from me or from my friend there (pointing to the Public Prosecutor). If you took your law from him you will be in a perilous state, truly a sad plight (laughter). But in this case, it is not the case of any man's individual opinion or of the opinion of a small number of Mussalmans, though you cannot hurt the feelings—the religious feelings even of these. Here it is not a question of a sect but of a religion. No person who calls himself a Mussalman, can go outside this book (pointing to the Quran). Look at this translation in English. This book is full of repetitions. But you see what a small book it is in spite of its repetitions. Altogether it is only about 500 pages. It is this book which constitutes the chief source of our religious laws. I wish to explain this so that there may not be any misunderstanding. You ought to know where my religion is to be found. I do not take it from any individual's beliefs. My religion is all contained in the first instance in this tiny volume. Then comes the Traditions of our Prophet. But about this original source (pointing to the Quran) there is not one single sect of Mussalmans that differs about a single syllable. Therefore, you will find that here is a solid bed-rock of our Faith about which there is no difference of opinion. In the case of the Prophet's Traditions, even if one of the compani-

ons of the Prophet said that the Prophet said so and so, and if that tradition, handed down from his companions, is against or in contravention of anything contained in this book, no Muslim will accept that tradition. We shall not believe anything that is attributed to the Prophet if it is against the Quran. But if it explains it (The Quran) or supplements it (*adjuvendi cause* or *supplendi cause*) we may accept it. I wish to make no odious comparisons. But what I wish to point out is that the four Gospels of the Christian Scriptures, if we have to test their authenticity (Interrupted by the Court).

The Court.—I cannot allow you to go on in this way. It is not strictly relevant to the case. Are you speaking in your defence or not? What is your point?

M. M. Ali.—My point is that even the Prophet's Traditions have been authenticated with the greatest care; but their testimony too cannot over-ride the dictates on the Quran of which all sects of Islam agree. It has been said that there are sects. Well, I am not going to base my case upon anything which is subject to the differences of the sects. I am going to base my case upon the solid bed-rock of the Quran. If you will give me the opportunity to make the Jury understand what my friend the P. P. has so lightly brushed aside altogether.

The Court.—I cannot turn this trial into a religious controversy. This is irrelevant. You cannot cite these texts here.

M. M. Ali.—They are contained in my statement in the Lower Court. They are on record. I wish to explain their bearing to the Jury. Well, if I am not allowed to explain my case I will stop.

The Court.—Why bring out this religious matter which has no concern with me? I do not want to limit you unnecessarily. You must confine yourself to the charges against you.

M. M. Ali.—I entirely differ from the Court in this matter. I think I am entitled to explain as to what my religion lays down without any difference of sects and to prove that this is the religion which the law protects. Tell me that the law does not protect my religion and I am satisfied. I will sit down. I do not know how you are going to sum up the case to the Jury. Therefore before you have summed up and their verdict is delivered, I am putting this before the Jury.

The Court.—I shall tell the Jury however that the excuse you offer is no excuse if you have done anything which is a criminal offence—that religion is no excuse for a criminal offence.

M. M. Ali.—Therefore it seems to me that the summing up too is already done, before I have done with addressing the Jury. There have been so many things, too, previous in this trial.

The Court.—Whether you have committed the offence or not has to be decided according to the law of the land.

M. M. Ali.—There is nothing which is required by a man's religion which can be an offence in British India as long as the Proclamation holds. You cannot in this country ask a Hindu to kill a cow. Before enlisting recruits you have to take people's answers down and you bind them by a certain oath. This is the form (showing the form) upon which the soldiers are enlisted. People take the oath that they will abide by their pledge. Yet not a single Hindu soldier who takes that oath will kill a cow in spite of all the allegiance that he might owe to the King. Therefore, if his officer commands him to kill a cow and the Hindu soldier refuses it, will he be hauled up before this Court? If the commander orders a Hindu or a Mussalman soldier to use cow or swine-greased cartridges—which the Hindus and the Mussalmans won't touch—and he refuses to do it, could he be brought before any Court of Law? The Queen's Proclamation will give him the protection—no matter what your Penal Code might say. So long as what I do is enjoined by my religion, no Indian Penal Code or other penal law can touch me because the Queen's Proclamation is there. As long as the Queen's successor is the Ruler, as long as the King's picture is here, you, the Judge, will have to take your orders from the Queen's Proclamation and the King's, otherwise I will know that the whole thing was a camouflage, and that all this talk about tolerance was sheer cant and hypocrisy. Now, in this form you will see there is a question (Reads the form)—“Are you willing to go wherever ordered by land or sea and allow no caste usage to interfere with your military duty?” Take it that every soldier at the time of enlisting has got to answer this in the affirmative and to sign this form. That does not allow the commandant to believe that the religious commandment is therefore binding on a soldier. Supposing the man is asked to kill a cow by his officer to provide beef for him. The man absolutely refuses that and he quotes his Scriptures and Shastras. No section of your Penal Code will

ever assist the Judge or the Jury to declare that this man would be punished because he is acting according to his religion. Say that he can be punished and I sit down. No, gentlemen, you have to write on every section throughout the Penal Code and every other law, the favourite phrase of the lawyers "without prejudice," i.e. "without prejudice to a man's religion." You say that there are bad customs like 'Sati' which we cannot allow. Then you should declare the customs which you will allow and the conditions on which you will be tolerant. Even murder is not murder if the man's religion demands it. And the Queen gave the law's protection by the Proclamation to that religion. You say there are many religions and sects in this country. Well, then, you should have proclaimed that such and such religions shall receive protection. You should have made it clear that on these conditions alone whosoever wanted to live within this Empire will be allowed to live and be regarded as a loyal subject. Whoever did not want to live within the orbit of this loyalty, that man would either have walked out of this Empire or would have kicked you out of it. My friend (the P. P.) told you that we are very sincere, that we are people who are straightforward. I am thankful to him for this compliment. But he did this for his own purpose, and I am going to use it for my purpose now. Gentlemen, you will now understand that we are not the people who are going to be easily frightened into telling untruths to escape punishment if we deserve it on the evidence laid before you. Whatever evidence there is in this case it is of a trivial character and I will not worry you about these trivial things. I am not going to bother about the evidence regarding the time we left the Kanyashala or returned to it or about the Subjects Committee which was led to prove our association. Association with whom? Association with my brother? In that case the Public Prosecutor could similarly have given the whole of our past history and with his chronological order should have placed the evidence before you that my brother was present at my birth; that we lived together in the same home—that he took away my pocket-money when we were in school—and when I demanded back my money he beat me black and blue (laughter). This is association! (laughter). All this, gentlemen of the Jury, is trivial evidence. The main case is, Does the Queen's Proclamation give protection to the Muslim religion or not? My whole contention is that if we ask the Muslim soldier to give up serving in the British Army and to refuse to recruit, and ask other people not to be recruited, and we say and prove that it is to be found in the Quran, then we are immune. You cannot punish us. Where the Penal Code is not opposed to the Quran, it stands. When the Penal Code is in antagonism to the Quran it does not stand. It must go. What is the whole-

case. If I am wrong in this, let the Judge decide. I will be content. You, gentlemen, must not take what the Prosecution says about individual opinion as affecting our case, though even in that case we have got to think of the man's religious feelings. I have given you 17 or 18 out of the 34 Hadises and the six verses from the Quran cited by Maulana Hasain Ahmed Sahib. From these very citations the gentlemen of the Jury and the Presiding Judge may understand very clearly what a Muslim must not do. The Public Prosecutor has talked of verses cited without their contexts. It was to avoid this that I have given long extracts from the Quran so that you may be easily able to understand the context. I say, ask any Muslim of any sect, send for any man—even the Court Chaprasi—and ask him to say if what I say is written in the Quran or not. He will easily point it out for you if he can read the Quran, and if he knows Arabic he will explain it to you. There would be no difference of opinion. I challenge the Government—I challenge the Prosecution to produce any man, to produce any juridical opinion or Fatwa to show that what we declare is wrong. There might be a difference between the Shias and Sunnis—there is a difference about the Khilafat question. The Shias do not believe in the Sultan's Khilafat. There might be some difference about some other matters ; but there is no difference of opinion about this. As regards non-co-operation generally there might be a difference of opinion. There might be men who are against relinquishing honours or service or giving up grants-in-aid to schools. They say this is a matter of business, not of friendship or co-operation; you may retain this grant or leave it. But after all it is a small minority that says so and many of it have sold themselves to Government. But so far as the question of killing another Muslim is concerned, there is no difference of opinion. This is the main point.

Now, gentlemen, I want to say something about the charges. It was not for you, gentlemen, nor for me, to object to the misjoinder of charges. If I am to address any one on that point, I shall address the Judge. I think I am within my rights if I refer to this. But so far as you are concerned, I may tell you, gentlemen, that any number of sections—109, 117, 120B, 131 and 505 of the I. P. C. have been jumbled together for the purpose of creating confusion—though section 233 of the C. P. C. lays down that these several charges cannot be joined. Sec. 233 runs thus :—

Sec. 233.—“For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Sec. 234.—“When a person is accused of more offences than one of the same kind committed within a space of 12 months from the first to the last of such offences, he may be charged with, and tried at one trial for any number of them not exceeding three.”

The Court.—I do not think you should trouble yourself in reading this to the Jury. There cannot be any re-casting of the charges at this late stage.

Maulana Mahomed Ali.—The general rule is that the individuals should be separately tried and the charges should be separately dealt with, because if this is not done, it will prejudice the accused and it will prejudice the gentlemen of the Jury. I do not know why they are jumbled together, but it seems to me that all representing the Crown have criminally conspired (laughter) so that so many sections of the law have been brought in only to confuse everybody. I do not know whether any of you, gentlemen, have understood them clearly. I did not quite understand what was the first charge, and what was the second charge—what was to go before you as Jury and what was to go before the Judge and before you as Assessors. It was not quite clear until to-day. When I was being brought here from Waltair, one of the policemen escorting me in the Special train asked me with what offence I had been charged. I did not know but told him that my warrant had recited sections 120, 131, 505 and 117. The policeman drolly remarked :—

“They may apply as many as they like, for after all they are home-made sections” (laughter). I wonder if any of you, gentlemen, have played billiards. Well there are three balls in billiards and you score by hitting your ball in such a way that it hits the other two — hits another and then drops into one of the pockets attached to the table or forces the other balls into these pockets. But sometimes these cursed balls lie on the table in such a manner that you don’t know what to do with them to score and this happens infernally frequently to the beginner. Well, the advice that you will in such a case get from the more experienced is to hit hard and trust the rest to luck (laughter) and not unoften you score what is called a fluke in your opponent’s case, and a very difficult stroke of course, in your own (laughter).

Well, gentlemen, that’s precisely what the Prosecution has done with these charges. It has hit hard and trusts you and the judge for a score. Out of so many sections one or two may manage to stick (laughter).

The whole thing, so far as I understand, is that there are two main offences with which we are charged. The first offence is an agreement constituting criminal conspiracy and the second is the attempt to commit an offence—(after interruption by the Court) agreement to commit a criminal offence which makes it a criminal conspiracy, and secondly, to commit an act in pursuance of that conspiracy. These are the first two charges. Then comes the question of my statement, which was likely to seduce the troops from their loyalty. Then, of course, comes the abetment by the several co-accused. I am told the only thing that will go before you as Jury will be the attempt in pursuance of that conspiracy. But I will take up the first charge first—as regards an agreement. I am not quite sure whether any of you gentlemen knew that these sections 120A and 120B were added to the Penal Code not so very long ago and I happened to be present in the Council Meeting in which the Conspiracy Bill was passed. I was sitting in the Press gallery, during the Lunch interval, when my old friend Sir William Vincent came into the hall of the Council. I was sitting with a distinguished Journalist who has since become a Moderate leader and a particular friend of Government. William Vincent asked me jovially if we two were conspiring. I said to him: “For conspiring an agreement is necessary, and as you know only too well, I never *agree* with any body” (laughter). And, gentlemen to the Jury, truly enough there has been no agreement. No evidence has been led about agreement, whether here or in the Lower Court. “It is a matter of presumption, says the Public Prosecutor. And it is really upon “presumption” that they are going to transport me for life—to take me away from my family, to take me away from my wife and girls, to take me away from my wife and aged mother—to take me away from my country, which is still more important to me. And all this is on a matter of “presumption.” Not a single witness came in to say that there has been a discussion about it. I am not quite sure whether the Judge was filling the gaps in the evidence by asking us questions about this. Anyhow I said in reply that we never discussed the question about the troops. We are told by the Prosecution that the accused knew more than the Prosecution. I think that is perfectly true. As a matter of fact, the Prosecution knows so very little (laughter) and they pretend to increase their knowledge with the assistance of the inventions of the Police (laughter). Yes, the accused knew what the Prosecution does not. But have they not put all their cards on the table before the Committing Magistrate?

You, gentlemen, have had a long recitation in this Court when the Clerk of the Crown read my statement made in the Lower Court. In that statement I shewed very clearly the whole genesis of these prosecutions, and I hope you listened to it very carefully. It gives you the whole genesis of this case. Well, I am supposed to be a very frank man—we are very frank people. Ex-hypothees you will take it that we are truthful people also. So far as any agreement to tell the Muslim troops in India even what the law of Islam is concerned, there was none beyond this resolution before you. But the day a man calls himself a Mussalman he is bound to abide by what is contained in the Quran. If one single syllable of it I reject, I am not a Mussalman. I may be the worst sinner. I may be, no matter however so, sinful—I will still be—so long as I do not reject anything out of this book—I will still be a Mussalman. But the moment I reject this, however pious or otherwise I may be, I am not a Mussalman. And whatever is contained in the Quran I am required by the same law of Quran to go and preach to every body in the world—even to non-Muslims. Take the case of my revered friend here, Maulana Hussain Ahmed Saheb. He has been teaching in Medina—he is the disciple of Maulana Mahmud-ul-Hassan Saheb the late Shaikh-ul-Hind. It was from the Hejaz that he was arrested and taken to Egypt and then to Malta. He was teaching at Medina for ten years. He taught there the Prophet's traditions. Supposing he sits outside his house and he reads the Quran and he reads those very verses—that "Whoever kills a Muslim wilfully will find his reward in Hell. He will abide therein for ever. God will be wrath with him. God will curse him. And God had prepared for him a severe torment." Supposing when he was reciting this, a Muslim soldier was passing there. Will you say that Maulana Hussain Ahmad has committed a crime under Sec. 505, Indian Penal Code? If you will say this, then why all this tall talk about toleration? Or suppose a Muslim sepoy came to a Mosque; would the Maulana be a criminal because he recited this verse in the service while that soldier was there? Take another case. A sepoy comes to him and says—"Maulana, I want to know what is the law of Islam: I am required to go to Mesopotamia to fight against the Khailifa—is it lawful for me to go there and fight against Mussalmans? The Maulana says it is unlawful. If he says it is lawful then he becomes a Kafer. If he keeps silent, God will curse him and the whole world will curse him. Therefore he will have to say—'No, it is not lawful!' It is his duty as a religious teacher when a man comes in and asks him what is the Islamic law, to explain to him truly the law of Islam. But if he cannot for fear of the Penal Code tell the truth—then the curse of God comes in.

Take another case, the Maulana goes in a train and finds Moslems going to Mesopotamia to fight against people who are waging Jihad—the Maulana tells them “It is unlawful; this is not allowed by Islam. The Prophet says “Do not become Kafers after me by killing each other.” Will you give the Maulana no protection of the law? You may say—Well, it is alright for him to say this in his prayer. And when somebody comes and asks him what is the Islamic law, it is right for him to say so as a religious teacher. But it is not his duty to go to the house-top and proclaim it from there: then it would be seduction. Then it would come under Sec. 505 and Sec. 117, or for the matter of that 121A or 121B. I say that *even that is intolerance*. Because the Quran lays down clearly who will receive salvation and will not. (Quotes the Quran). I am quoting that small chapter of the Quran in which God swears by the world’s history. In that God says—‘I swear by the world’s history—I swear by all the time that has passed before that all are certainly in perdition but the Faithful who will do good works and tell other people to do the right thing and to have fortitude in case they are not successful.’ The four conditions required for a Moslem to win salvation are contained in this the shortest chapter of the Quran. A man’s salvation depends upon these; that he must have faith in them; that he must act upon that Faith. A man who believes in Islam, says his prayers, gives alms, fasts in the Ramzan, goes to Mecca and does not hurt any body.’ Do you think that he will have salvation with only this? No! Because the Quran says—the third step too you must take—that you must go and preach those good things to every body. You must go and propagate these doctrines. You are not born to save only yourself. You are here to save your neighbours as well. Therefore the three things that a Moslem must do are that he must believe, he must act according to his belief and he must also propagate that belief. If a Muslim says that he believes that killing another Muslim is *haram* and yet goes and kills him, he may not win salvation. But he is nevertheless a Muslim if he really believes that he is a sinner. Of course, if he denies that it is *haram*, he rejects the Quran and then he is a Kafir. But suppose he believes that it is *haram* and does not kill another Muslim, he may not yet win salvation if he sits idly and lets others kill him. But if he is not idle and goes and tells other people also that it is *haram*—then he too may not win salvation unless he persists in his propaganda even if his efforts fail. If he fails in his propaganda and he suffers because of Sec. 505 and Sec. 117 and is sent to Jail—What is he to do? He must show fortitude! He may be hanged, he may be drawn, he may be quartered, but he must shew fortitude and persevere in his mission.

Then only will he win salvation and escape perdition. He must not try to change God's law by one single syllable. He must abide by it and face all the consequences.

Gentlemen, it is not such an easy thing to go to Paradise and claim the embraces of the *Houris*! An Urdu poet says
 در شہادت گم قدم رکھنا ہی . لوگ آسان - سہولتی دین مسلمان ہونا
 ("It is to step boldly towards the sacrificial altar of Love. People imagine it is easy to be a Mussalman.") By clipping one's moustache and growing a long beard and muttering prayers one does not become a Muslim. He has got to do all those things but he has got to do many other things besides, because we are required to do all these things by our religion. It is not enough that I should not go to war. I have got to go and induce other Muslims also not to go to war to fight their brothers. I shall induce him in every possible way. I must take the rifle out of his hand—but not by force, not by compulsion but by clearly expounding our religious law. We are saved only when we have saved these people from going to fight and kill other Mussalmans.

Gentlemen, a military gentleman like Col. Gwyer in this case went to Bombay. His name is Col. Beach. On the 20th October, so a telegram in the *Pioneer* tells us, this gallant officer who had gone down from Army Head Quarters, Simla, met the members of my profession—perhaps to seduce them from their duty (laughter)—editors of local newspapers and news agencies in a round table conference and among other things, that this officer said was the following : with reference to the arrest of Ali Brothers, though the matter is still *sub judice* (and it seems to me that from the Viceroy down to this Military Officer all at Simla are privileged to do that) (laughter). (Reads from a paper) "Referring to the arrest of the Ali Brothers, Col. Beach speaking as a soldier said that it would be worth while asking those who are trying to seduce soldiers to consider for a moment if a soldier who once turns a deserter would be loyal to any other cause to which he was won over." That was Col. Beach speaking as he tells you, as a soldier. Well done, Col. Beach (laughter) ! A most sound doctrine and a remarkably good logic for a soldier (laughter)! But speaking not as a soldier but as a Muslim, may I ask who is the seducer ? Every child born into this world is first a soldier of God and it is men like Col. Beach and Col. Gwyer who are the seducers that seduce him from his first duty and his sole allegiance. May we not equally ask these Beaches and Gwyers, if God's soldiers who once turned deserters would be loyal to

them and to their cause to which they had been won over? A man's first duty is to his God. The Quran tells us that before men's souls were put into their bodies they were asked by God "Am I not your Lord" and they answered in unison "Aye." Well, hang all the souls, gentlemen. There was all the agreement that you need for a criminal conspiracy under Sec. 120 A and 120 B (laughter). No, gentlemen, it is your Beaches of the Army Head Quarters of Simla and your Gwyers of the Western Command that seduced soldiers from their duty, if you have *any* faith, if you have any belief in God then your first duty, your prior allegiance is to God. Is it not the duty of Christians to believe in Christ? Is it not the belief of the Hindus—is it not a Hindu's first duty—to obey Lord Krishna? Still we talk of allegiance to King—still we talk of loyalty. An Englishman—not a Mussalman—but a Christian Mr. H. G. Wells wrote a book after the War—a sort of allegory of the whole British nation—I do not know whether any of you has read it. It is called "Mr. Britling sees it through." And what does he say? What does Mr. Britling, who is supposed to be the average Englishman, see through that terrible war? He says that religion is the first thing and it is the last thing. A man who does not begin with it and who does not end with it has not led a true life, has not found the true meaning of life. His only allegiance his only duty is to God. He might have his scraps of honour, he may have his fragments of loyalty; but when it comes to the test of loyalty to God, allegiance to God, all these fragmentary loyalties, all these scraps of honour, they are like a mere scrap of paper passed through fire that shrivells up and is scattered to the four winds or merely blackens a man's hand as so much dirt. That is what an average Englishman has seen through this war and publicly said. And it is after this war that God's law is to be brushed aside for us in India because men's law—120 B and 131 and 505 and 117 is to prevail over God's law. When I have Swaraj I will see to it that I do not let any one seduce my fellow countrymen from their true loyalty. But so long as I want to reside in British India, I claim the protection of the Queen's proclamation. If I were a Hindu, I would have said the same thing. What was Christ supposed to have said—(interrupted).

(The Court rose for the day in the midst of the sentence).

Maulana Mahomed Ali.—Well, gentlemen, the Court stops me at 'Christ.' I shall tell you to-morrow what Christ is supposed to have said. The Court adjourned for the next day.

FIFTH DAY'S PROCEEDINGS.

FRIDAY, 28TH OCTOBER, 1921.

MAULANA MAHOMED ALI'S ADDRESS TO THE JURY—Contd.

The Court sat at 11 a.m. as usual. Maulana Mahomed Ali continuing his address to the Jury said :—

Gentlemen of the Jury, I was explaining to you that the Proclamation of the Queen made in 1858 confirmed by the late King Edward in the Proclamation made on the fiftieth anniversary of the Queen's Proclamation and also confirmed by a letter addressed to the Princes and People of India by King George after his accession to the throne gave the protection of the law to His Majesty's subjects in British India with regard to their religious beliefs and religious practices, and I was telling you that that was the whole of our case. And that whatever may be an offence according to the Penal Code, or for the matter of that any other Code, if any person be he Hindu or Mussalman or Christian—does a thing which his religion requires him to do, then even if that is an offence under the Penal Code or any other law that is enforced in British India, that law cannot stand in his way and he cannot be punished. The law gives him its protection as stated in these three Proclamations. But it is not his word that you are to take ; he has got to prove it that his religion requires it. He has got to explain it. As I had told you yesterday, this trial is really a very important trial because after all the clear issue involved in it is—whether God's law is to prevail or whether man's law is to override God's law—whether the Queen's Proclamation has any value—whether the King's solemn Pledge has any value or not, whether the Judge is bound by it—whether the Jury is bound by it or not. It will not be possible for me to explain my case when the Judge has summed up. I do not know how he is going to sum up. But it is on this point that the Judge's summing up will be of importance. You cannot take the law either from the Public Prosecutor or from me. But you have got to take it from the Judge. But at the same time I ask you to understand, gentlemen of the Jury, that if you to-day deny a Hindu or a Mussalman or a Christian his right to do his duty to God—to do what his Faith enjoins him to do under pains and penalties—though not of this world but of another, a future world—if you do not allow him to do what his religion demands of him to do, then I say, you yourselves will be a party to the destruction of religious freedom enjoyed in this country and given by the Queen's

Prison Motor Van.

Accompanied by Military Lorries.





Proclamation. It is not a question of a particular Faith—it is not a question of the Hindu Faith or the Christian Faith or the Muslim Faith or the Jewish Faith. Every Faith even that of a sceptic—even that of an atheist—has to be protected—but the freedom of all these people will be taken away and I ask you—will you be a party to this? I was telling you yesterday what Mr. H.G. Wells has said in his book “God, the Invisible King” and also in another book of his—a novel “The Soul of a Bishop.” He writes—a saying has been attributed to the Master Jesus Christ on whom there be peace—“Render unto Caesar what is Caesar’s, and render unto God what is God’s.” And then he asks “Who is this Caesar that wants to share this world with God? What is Caesar’s that is not at the same time God’s? The world is not divided into two parts—one God’s and the other Caesar’s. No, there are not the two Kings of Brentford.” God is the sole Ruler. And if the king or any other human creature, be he the head of a Republic or the Judge or a member of the Jury—demands from you anything he must demand from God and through God. If they demand from you anything which is against God, then that demand is not to be satisfied. It is God alone whose demand is to be satisfied. This, says Mr. H.G. Wells, is coming to be the universal Modern Religion. Whether it is that or not, it is certainly the religion of every Muslim. It is not a question of my individual faith—my own whims and idiosyncracies—I challenge the Government—I challenge the Public Prosecutor to produce any man in this trial—to produce any man to say—any Mussalman who could say that, in spite of what God says if the Government of the day says “you must not do this” although his religion requires it, any Mussalman who could say “Well, in that case, I must follow the Government.” And a Mussalman who says that, I say openly is not a Mussalman. And I believe that this is also true of the Hindus, Christians and Jews—true in the case of every one who believes in God.

Therefore you have got to see to this that every Mussalman who lives in British India—any where that a Moslem dwell—he is under the protection of the Queen’s Proclamation. He is to follow the law of the land but without prejudice to his faith. When we were interned we said the same thing to the Viceroy as we are telling you now. When they wanted to release us from internment, but on certain conditions, that we shall do this and not do the other, we said we shall agree to those conditions, but “without prejudice to our Faith.” Again as long ago as the 9th July, 1919, we sent a letter through the Superintendent of Betul Jail, where we were confined, to the Viceroy. Therein we said—“But since Government is apparently uninformed about the manner in which our Faith

colours and is meant to colour all our actions, including those which, for the sake of convenience, are generally characterised as mundane, one thing must be made clear, and it is this : Islam does not permit the believer to pronounce an adverse judgment against another believer without mere convincing proof ; and we could not, of course, fight against our Moslem brothers without making sure that they were, guilty of wanton aggression, and did not take up arms in defence of their faith." (This was in relation to the war that was going on between the British and the Afghans in 1919). "Now our position is this. Without better proof of the Ameer's malice or madness, we certainly do not want Indian soldiers, including the Mussalmans, and particularly with our own encouragement and assistance, to attack Afghanistan and effectively occupy it first, and then be a prey to more perplexity and perturbation afterwards—these were Mr. Montague's own words—and leave it to us to add one more appeal to the many already made, so frantically and so utterly helplessly for the evacuation of Moslem territory and for sparing the remnants of the temporal power of Islam." And we said—"This is only a repetition in belief of that which we have stated clearly enough and at considerable length in our representation of the 24th April to your Excellency and for this we have ample authority in our religion." I pass on :

"In the presence of the Magistrate and the Police officer who used to attend the Friday service at Mosque we more than once made that position clear. If, said we, His Majesty the Amir desires to enlarge his dominions at the expenses of our inoffensive country and seeks to subjugate its population that has never wished him ill, then we not only do not advocate assistance being given to him by Indian Mussalmans but we will most zealously advocate and lead the stoutest resistance against such wicked and wanton aggression. This is precisely what in September 1917, we had told the Hon'ble the Raja Saheb of Mahmudabad who had visited us at Chindwara and had referred to the possibility of foreign aggression ; and he had thereupon wired to Simla to the Hon'ble Mr. Jinnah apparently for communication to the Government that he was entirely satisfied about our political attitude. We do not want a change of masters but we do want the speedy establishment of a government responsible to the united people of India, and we hope, we have made the matter clear beyond the possibility of any doubt or misunderstanding."

"But if on the contrary His Majesty the Amir has no quarrel with India and her people and if his move must be attributed, as the Secretary of State has publicly said, to the unrest which exists throughout the

Mahomedan world, an unrest with which he openly professed to be in cordial sympathy, that is to say, if impelled by the same religious motive that has forced us to contemplate Hijrat, the alternative of the weak, which is all that is within our restricted means. His Majesty has been forced to contemplate Jihad, the alternative of those comparatively stronger, which he may have found within his means; if he has taken up the challenge of those who believe in force and yet more force, and he intends to try conclusions with those who require Mussalmans to wage war against the Khalifa and those engaged in Jihad, who are in wrongful occupation of the Jazirutularab and the holy places; who aim at the weakening of Islam, discriminate against it and deny to us full freedom to advocate its cause, then the clear law of Islam requires that in the first place, in no case whatever should a Mussalman render any one any assistance against him and in the next place, if the Jihad approaches my region, every Mussalman in that region must join the Mujahidin and assist them to the best of his or her power."

"Such is the clear and undisputed law of Islam; and we had explained this to the Committee investigating our case when it had put to us a question about the religious duty of a Moslem subject to a non-Moslem power when Jihad had been declared against it, long before there was any notion of trouble on the Frontier, and when the late Amir was still alive."

"One thing more has to be made more clear as we have since discovered that the doctrine to which we shall now advert is not so generally known in non-Moslem and particularly in official circles as it ought to be. A Mussalman's faith does not consist merely in believing in a set of doctrines and living up to that belief himself: he must also exert himself to the fullest extent of his power, of course without resort to any compulsion, to the end that other also conform to the prescribed beliefs and practices. This is spoken of in the holy Quran as '*Amr-bil-marooif*' and '*Nahi-anilmunkar*'; and certain distinct chapters of the holy Prophet's traditions relate to this essential doctrine of Islam. A Mussalman cannot say: 'I am not my brother's keeper', for in a sense he is and his own salvation cannot be assured to him unless he exhorts others also to do good and deports them against doing evil. If therefore any Mussalman is being compelled to wage war against the Mujahids of Islam, he must not only be a conscientious objector himself, but must, if he values his own salvation, persuade his brothers also at whatever risk to himself to take similar objection. Then and not until then, can he hope for salvation.

This is our belief as well as the belief of every other Mussalman and in our humble way, we seek to live up to it; and if we are denied freedom to inculcate this doctrine, we must conclude that the land where this freedom does not exist is not safe for Islam."

Now, this was the first charge we had brought against the Government—"During the War Mussalmans have been required, *in defiance of their religious obligations*"—mark the words gentlemen, "to assist Government in waging war against the Khalifa and those engaged in Jihad." And what do you think the Viceroy did? He did not hang us under Sec. 121—waging war against the King. He did not transport us for life under Sec. 131. He simply got us out of internment and arranged that I should go to England and explain the same Islamic law there to the Prime Minister and to other members of the Cabinet! But for the same we are now being tried for criminal conspiracy! What is the special offence in our case? What becomes of the case against the thousands and hundreds of thousands—millions of people who are saying the same thing to-day? Why are not they with us? I have complained about the misjoinder of charges because too many accused are tried for too many offences. But you have not room enough in this Hall—nay in any hall—to try each and every one of those together who say that it is his belief too—that it is his Dharma also? As I have said so often it is not a question of individual belief. It is not a question of my own individual belief—I who lived with Englishmen, who went to England to be educated at Oxford—I who was most friendly with the English people—even I have got to say it because it is a religious duty—even I have got to say that no Mussalman should serve in the British Army where he is forced to kill his own brethren for the advancement of unrighteousness. I said it then, and I say it now, that it is religiously unlawful. I said it then, I say it now, and I shall say it all the time. It does not matter if I am hanged for it and I hope when I am dead and gone, my carcass will shout out from the grave that it is the Faith of the Moslem—(interrupted).

The Court here interrupted the Maulana saying something to the effect that he would not allow a discourse on religious matters there.

M. M. Ali.—Will you not permit me to refer to the law of the Quran? My Quran says this is the law. May I have it from you authoritatively that the law for a Muslim is not his Quran?

The Court.—The law of the Quran is not the law of the country.

M. M. Ali.—I plead justification for what I did. I am simply stating that my Quran enjoins on me to do what I have done.

The Court.—That is not the law of the land.

M. M. Ali.—What I am concerned with is this that my law is to be the first law binding on me and I say that these three Proclamations give me protection.

The Court.—I rule that against you.

M. M. Ali.—I am very glad that you rule that against me. Not only has the Judge ruled against the King, but recently in the Legislative Assembly a Moslem Member proposed a resolution recommending to the Government that no servant of the Government and particularly no Mahomedan soldier should be asked to go against the law of his religion, and what did the Viceroy do? He disallowed the resolution.

However, I now come to the first charge against us on which you have to sit here merely as Assessors. But in any case I can address you, gentlemen, though I have now to address you as Assessors. You have been told and have seen for yourselves that not a single witness was put into the box to prove that there was at any time any agreement. My friend here asked you to take that on presumption. What a presumption! Are you going to hang us merely for this presumption for which there is not the slightest piece of evidence—absolutely none?

No man—not a single witness has said that he ever saw us, heard us or suspected us to be conspiring, agreeing to commit any offence. I was in England in the month of February, 1920, and probably on the very day I was interviewing the Officiating Secretary of State when a Conference was held in Calcutta—in which certain resolutions were passed. That was evidence against me! But I do not mind that. The Public Prosecutor no doubt read out Sec. 10 of the Evidence Act to you—that section tells you, he said that it is admissible as evidence against me. But my very amiable friend there (pointing to the P. P.) wants you to do something more. He is a very clever gentleman. But I knew what he was aiming at. He said it was evidence admissible against me; but he meant not only that but that you ought to accept everything as gospel truth. He asks you to simply believe every bit of evidence as true and what is more, presume everything else required to prove the criminal conspiracy. Presumption has to do duty for proof

and any evidence is sufficient to transport us for life. Gentlemen, I may tell you that I knew nothing about the conspiracy. When my brother went to Assam I did not know. I did not know of it until the P. P. got up and said that he would bring in a witness to prove this. It was for the first time I learn that my brother had gone there. The rascal ! He goes there without my knowledge and I am to be transported for life. That's the worst of being a younger brother ! (laughter). But even that is no proof of agreement to commit a criminal offence. You cannot presume that. It must be proved and proved without a shadow of doubt. As for the Karachi Conference, my brother could have got off on the score of not having spoken. But the Public Prosecutor can fill that gap too. In Australia there was a farmer who had a son—and I am afraid—not a very clever son. People heartlessly even called him fool, and wherever his father took him, through his folly, the father got into a sort of disgrace. Once the father was invited to a feast and the son wanted to go too. But the father refused. He was afraid that his son would speak and would be found to be a fool and he would be once more disgraced. The son then promised that he would not utter a single syllable. And so his father at last consented to take the fool to the feast. The son went there and sat in a snug corner. Several persons put him several questions but the son did not, as he had promised his father, utter a single syllable in reply. So when a man was putting him another question, one of the guests said—'what is the use of asking this man any question, can't you see that he is a fool ? The son immediately shouted out at the top of his voice, addressing his father who was at the other end of the table,—“Father, father, they have found it out ! But I did not speak.” (laughter). So the P. P. too has found it out that my brother was a conspirator at the Karachi Conference though he did not speak (laughter). The P. P. has said that we are earnest people. By the same token, gentlemen, we are truthful people. And although I am not a witness deposing on oath, I say it solemnly that you and the Judge have to take my word for it that there was never at any time any discussion among ourselves about the declaration of Islamic law regarding the Moslem troops serving in the British Army. The Judge put me this question and I said that there was no discussion at any time. Why should there be a discussion about it at all ? Supposing to-morrow we hold a conference of the Muslims assembled together in Karachi and declare that there is no god but one God and Mahomed is His Prophet. Do you think it will be necessary for us to sit together and come to an agreement ? The moment that I say I am a Muslim there is that agreement. But there cannot be any time limit to

it. It cannot be only between February 1920 and September 1921—of course you know the addition to the period of the charge was the particular gift of my little friend there (pointing to Mr. Ross Alston). There was no mention of 1920 before the Committing Magistrate. This is 'slight alteration' that my slight friend has made to the charge which means twelve months more added to the period of the charge of conspiracy against us. So, believe me, there was no agreement except the agreement that we are Mussalmans. Every Mussalman, the moment he says that he is a Muslim, and accepts the example and the precepts of our Prophet Hazrat Mahomed God's peace and benedictions be upon him—that very moment he agrees to this also, that it is unlawful to enlist or remain in an army which must wage war against and kill Mussalmans without just cause. And the Resolution passed at the conference of the Jamiat-ul-Ulama—it was nothing new that they resolved and declared. What discussion or agreement was required for the Ulama to declare the well known law of Islam against the killing of Mussalmans, or to sign a Fatwa or Juridical pronouncement? Similarly, what discussion or agreement did the two Mussalmans who are our co-accused need before speaking the Resolution here? They were asked to declare the Shariat and they did it. What related to the army was not a resolution but a declaration of law. But there was a Resolution, too, a solemn resolve and determination that if the British Government directly or indirectly, secretly or openly, takes any hostile action against the Government of Angora, the Mussalmans of India would be obliged to take to Civil Disobedience in concert with the Congress and to make a declaration at the forthcoming Congress at Ahmedabad in December of Indian Independence and of the establishment of a Republic. Gentlemen, we had provided not only for openly hostile action against Angora on the part of British, but also for secret action, not only for direct British action but also for indirect action through the Greeks. Yes, we know only too well our English diplomacy. At Oxford they define Association and Rugby football in this manner: "Soccer" is a game in which you kick the man if you can't kick the ball. In "Rugger" you kick the ball—if you can't kick the man! (laughter). In England, they want to down every other nation and particularly the Turks. But the rule like Rugger is that they will fight themselves only if they can't get another to fight their battle (renewed laughter). Gentlemen, we said that in the event of a re-opening of hostilities against the Angora Government, it will be our duty in concert with the Indian National Congress—in concert with our fellow-countrymen—to start Civil Disobedience, and that if this sort of thing goes on, it will be our duty—a duty

Of tremendous responsibility—we did not consider it to be a light matter—it was a heavy responsibility that we determined to take—the responsibility of declaring absolute freedom and independence of India to establish an independent Republic of India. This was not said in a light vein, as a jest or mere bluff. This was a very serious matter indeed. We knew what we were about. Every mother's son of us may be hanged for it. We could have been shot down instead of being brought down to this Hall and having this farce of a trial—the Judge and the Jury and all this paraphernalia—instead of this lengthy circuitous route there could be a short cut—no prosecution, no judge, no jury but only a firing party at dawn led by Col. Gwyer or Col. Beach and a chatter of rifles and there would be an end of the matter. However we did declare this and in consideration of that grave matter we determined that in concert with our fellow-countrymen, we would do either of these two things or both. The prosecution however, is not for that: It is for the earlier portion of the Resolution which is cited in the order of Government sanctioning the Prosecution. But the previous portion of the Resolution is not stated in its entirety. That Resolution says: "This meeting further plainly declares that according to the Islamic Shariat, it is strictly forbidden to serve or enlist in the British Army or to raise recruits." Therefore the charge is that we declared the law of Islam and the mere declaration of the law of the Muslims, if it is an offence, then, gentlemen, say so. In that case, if you declare the laws of Christianity that too is an offence. The Hindus following their own religious injunctions declare the Hindu law—that is also an offence. Therefore a number of men who demand from an Indian soldier that he must not kill a cow, will be guilty of agreement to commit a criminal offence, that is to say, they will be guilty of criminal conspiracy. Now, I say if this declaration is an agreement, if to declare the laws of Islam is an offence, and we are guilty then say so, gentlemen. But this is a matter which the Judge has got to decide, only you will have to give your opinion as Assessors, and it would rest with him whether he takes your advice or not. There is an Arabic proverb which says "always consult your wife but do what you think best" (laughter): I think that is the law in regard to Assessors also (laughter) always consult your wife, i. e., the Assessors, but do what you, the Judge, think best (laughter). Gentlemen, bigamy for an Englishman or a Christian is a crime and even a Mussalman can have only four wives. But the Judge has in this case five wives that are to be consulted (laughter). But the Judge will do what he thinks best. I will still appeal to the Judge because he too has a soul to be saved like ours. I make no appeal to him for my own

sake. I do not even appeal to the Jury for myself. I appeal to them for their own sakes and have said to them whatever I had got to say in the matter. You will only decide upon the facts before you and let no man say that any outside influence was brought to bear upon your decision.

Now, I come to the charge which is before you as Jury. You are the sole Judge here. You are "Monarchs of all you survey" here. I would not like you to disagree in your finding. I hope you will agree whether your verdict be for us or whether you come to a finding against us. But let there be an agreement. Let it not be said that the Hindu jurors came to this finding and the Christian jurors came to that. Let it not be said that the gentlemen working in the Greek firm of Ralli Brothers gave this verdict and the gentlemen from Forbes, Forbes and Campbell gave that verdict. You should be united. I prefer that you should be united in a matter of grave import like this. Let yourself be guided by your own conscience because that is after all the basic law of all Faiths. You must do the right, you must act according to your conscience. Now, on this matter I may again tell you, you are the sole monarch and the charge on which you are to give your verdict is the matter of "attempt," that is, under Sec. 131. (Read the Section). "Whoever abets the committing of mutiny by an officer, soldier or sailor in the army or the navy of the Queen or attempts"—that's what we are charged with "to seduce any such officer, soldier or sailor from his duty" I leave out the allegiance with which we are not charged—"shall be punished," etc., etc.

The Court.—You are charged with being members of a conspiracy which attempted to seduce the troops.

M. M. Ali.—We are charged with being members of a conspiracy, that is to say, charged with having agreed to commit a criminal offence, and in pursuance of that conspiracy, some body within this conspiracy some fellow-conspirators attempted these things. It does not matter whether we ourselves have attempted or some other persons have attempted. True : well, Mr. Ross Alston of Allahabad, (the Advocate General of the United Provinces assisting the Public Prosecutor) gets some body in Allahabad who gets something printed somewhere and gets that some one to reproduce something from the Ulema's Fatwa although he is perfectly ignorant of the Quran. All this has to be carefully done. He gets an ignorant Maulvi to copy it—every Mussalman fears and trembles when he has got to copy anything from the Quran lest he writes something different and attribute it to God falsely—the Maulvi copies it, gets it

published for Mr. Ross Alston—gets it printed in Allahabad or in Lahore, he gets the same kind of envelopes; the letters are posted from different places, but mostly from Allahabad where Mr. Ross Alston comes from (laughter). And you have got to transport me for life for this! This is the thing which we are supposed to have done. What is the proof? He (the P. P.) says, this is the proof. A poet says:

آفتاب آمد دلیل آفتاب “The appearance of the sun is itself the proof of the Sun.” So, in this case too, what further proof is needed?

Well, the charge is that these leaflets were sent to Moslem soldiers.

That they were posted mostly from Allahabad because some were posted from Cawnpore where Maulana Nazir Ahmad Saheb, one of

the accused, comes from, the Public Prosecutor attributed them to him and to us—well, Allahabad is the place where Mr. Ross Alston comes from, the place from which two C. I. D. officers who have deposed

against us come—well, from that can you not have this presumption that it is Mr. Ross Alston who did it? (laughter). Well, if this thing (showing the leaflet) is sent round, is that by itself sufficient for you—as men of

any sense—you who are practical business-men—is it sufficient for you to transport me for my life—to take me away from my children—to take me

away from my wife—to take me away from my mother—to take me away from my country which is dear to me to take me away from God's

work simply because they were posted—mostly from Allahabad? Is that or is that not the whole offence? Read it for yourselves. Search for

it in the entire record of evidence. If you are conscientious, your judgment must be right. You who are conscientious men—you who cannot kill a

gnat for nothing, you are not going to transport six men for life—not six men, for at least we find we are to be seven—our revered friend Jagat

Guru Shri Shankaracharya will also go with us Mussalmans, because if there was no evidence against him, it was amply made up after all by the

wrath of the perfectly peaceful Public Prosecutor. You saw that *baresark* rage yourself. Not, of course, a real storm, mind you, from such a gentle

gentleman but a fairly good imitation of one—a thing of the proscenium—something—just realistic enough to give us the impression that

there was a storm at last with lightning and thunder, hail and wind—all this came from my peaceful and amiable friend there (laughter). Are

you going to commit all of us on the proof that there are certain envelopes and certain officers from Army received by them—Officers! Euphemism

could go no further. Yes, if officers of courage in battle and length of service and medals—and those real medals—not of silver, hanging on their breasts

but medals of lead bullets that found billets in their bodies and their

breasts—so far as these are concerned, really and truly officers, but yet men who have got, even as veterans and heroes of a hundred battle-places to salute the merest white tyro, the merest callow youth with hardly a moustache on his upper lip but only girlish peach-down because they themselves are brown and black. These are the people who come before you. They come and present before you these things, and say—"a most terrible thing had happened. One verse—one incorrectly transcribed verse from the Quran was sent to us and even without opening these envelopes we scented that they were smelling of gunpowder, smelling of 1837. We rushed to our Officers Commanding and said—"Sir, save us from Islam! Our felings are hurt, our religious feelings are hurt. We are being reminded of our religion! We are being reminded of our God! For God's sake, protect us from God. Does not the Queen's Proclamation give us protection? We are being bombarded with the quotations from Quran! We can stand all bombardment but not this!" And it is on this evidence that we are going to be transported for life!

But, gentlemen of the Jury, I do not want you to save *me*. I want you to be saved yourselves. This is the only evidence and nothing more—not a jot or tittle more than this. If there was any, our friend (the Public Prosecutor) would have told you. He has got to transport seven for life—a large and long transportation indeed. He took four hours in addressing you—practically a whole day and thereby earned a day's fee, although his daily fee is perhaps greater than the monthly salaries of all of you combined (interrupted)

The Court.—You have no right to make a personal remark. Is it not in bad taste? I know that you don't mean it.

M. M. Ali.—I am sorry. But to what do you object? To the reference to the small salary of the Jurors or the fat fee of the Public Prosecutor and of his little friend?

The Court.—To any personal remark. It is not in good taste. Is it?

M. M. Ali.—I shall not refer to it again but I thought I might be permitted to commit just one offence even against good taste when I have committed so many against your Penal Code (Laughter).

(The Court remarked something which was inaudible.)

Mirza and Mahomed Ali continuing said—Well, Gentlemen, this is the main thing for which you have been sworn in as a Jury and taken away from your work—five of you. Well, wherever you may come from, from Kalli Brothers, or Forbes, Forbes and Campbell or the Customs House, you are here for that purpose, otherwise only two gentlemen might have been brought in as Assessors, as wives of the Judge (Laughter). In this case you are both the husband as well as the wife (Laughter). You are self-sufficient. You are the sole judge here as a Jury though there are several other charges—there are sections more than one can remember, there are sections 120B, 117, 303 and so on for which you act only as Assessors. As you may remember, when the Policeman asked me when I was being brought to Karachi, under what sections I was charged and I told him of all the charges and he said—well, they are all home made sections (laughter) and they can apply as many as they like. So this is the only Jury charge—Sec. 120 B read with Sec. 131. This is as regards the leaflet containing an extract from the Fatwa. It is the Jamiat-ul-Ulama that signed this Fatwa. We are supposed to be very frank people so we said this in the Lower Court as well as in this Court that we were glad that the Jamiat-ul-Ulama were at last doing their duty. The Jamiat-ul-Ulama is supposed to be party to this conspiracy. But the Government is very moderate. It has picked out only three Ulamas for this trial. The Government is astonished at its own moderation as Lord Clive said of his own loot : “I am astonished at my own moderation.” Out of the 500 Ulamas who signed the Fatwa only two or three have been brought here. Well, why have not the others been prosecuted? I thought that the Ulamas who had done this would have been here. It is for the first time in my life that I saw this leaflet here. In fact, it was for the first time in my life a little while ago that I came to know of this Fatwa of the Jamiat-ul-Ulama on this matter though I knew of their Resolution in their Conference at Delhi. However, it does not matter if I did not know the others who conspired with me. That is no protection for me. And I do not seek any. But in this case of attempt in pursuance of the conspiracy I thought the clear conspirators were the Jamiat-ul-Ulama. Whatever the conspiracy is, the Jamiat-ul-Ulama is a party to it and I said that at first the association of the Ulamas was doing its religious duty. But I was immediately corrected by my friend, brother-in-law and legal adviser, though not my legal representative in this case—Mr. Muazzam Ali. He said, no, the Jamiat-ul-Ulama too deny the distribution and printing of these leaflets. So I turned round and said in the Lower Court. “Well, I am not correct myself, but I hope they will soon convert the forgery into a fact.”

But it is the fact, gentlemen, that you have got to deal with and not with the forgery. Is it a fact that any body is a member of the conspiracy, who does this? This is a presumption and not a fact. Well, gentlemen, clear your head of this, of all these cobwebs woven by the P. P. It is nothing but throwing dust—good old Karachi dust (laughter) in your eyes. Nothing more than that!

I now come to Sec. 505. About the abetment of this I have not got to say anything. I have got to deal only with myself in my own individual capacity with regard to Sec. 505, because I am the biggest offender in the matter and the others are only abettors under Sec. 109. It says: "Whoever makes, publishes or circulates any statement, rumour or report, (a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the Army or Navy of Her Majesty or in the Royal Indian Marine, or the Imperial Service Troops to Mutiny or disregard or fail in otherwise his duty as such....shall be punished," etc., etc.

This is wider than Sec. 131, gentlemen, for I may not even preach to the Imperial Service troops of my own state of Rampur about their religious duty. What would my grandfather who was the "right hand man" as Government itself testified of his master the then Nawab Saheb of Rampur in 1857 and saved hundreds of Englishmen and English women at the risk of his life own and saved the U. P. Government what would he have thought of this prosecution of his grandsons for declaring to the Rampur Pathans the law of Islam about sparing the lives of Mussalmans? But that's another story. Well, gentlemen, Col. Beach of the Army Head Quarters, Simla, and Lord Macaulay have given me my cue (reads) "With intent to cause or which is likely to cause soldiers to disregard or fail in their duty as such"—But what is their duty—the first duty of these soldiers which they must not disregard or fail in?

When a child is born in a family—if there is any faith in that family the nurse should say not that a boy or a girl is born, but that a new recruit is born in the army of God. That child must be the soldier of God. That's why the primeval souls were asked this question by God—"Am I not your Lord?" and they said "Yes." Gentlemen, I am tempted to recite a verse—a verse of my own—a poor thing but mine own—as Touchstone said "Cinna the poet was killed for Cinna the conspirator when Caesar was murdered and the crowds had become mad through Mark Antony's rhetoric. They killed him as a conspirator. He said—"No, no,

I am not Cinna, the conspirator, I am Cinna the poet." But they said—"Then kill him for his bad verses" (laughter). Gentlemen, don't transport me for life for my bad verses. I address my own fellow countrymen, my own co religionists and I say to them you are being reminded of your duty, you are being reminded of your allegiance—you are being reminded of your loyalty you are being reminded of the pledge that you have given to Government before your God and man you are being reminded of your honour and you are asked to be faithful. (Recites a verse). "Kindly carry out that first pledge also the pledge that you gave to God while you are about it. You are loyal people. A little more loyalty will not be amiss." Can I not say to the Judge—can I not say to the Jury if these people are not true to their God, can they be true to their King? (Pin-drop silence prevails in the house).—God that gave them everything, life, honour, Faith, loyalty itself—God that has given them the King! if they are not true to their God, they cannot be true to their King. I say God before everything—God before loyalty—God before King—God before patriotism—God before my country—God before my father, mother and child. That is my Faith. Hang me if you like. But having done that, gentlemen, you may commit suicide yourself also, because then you would have murdered your own soul. You may walk and sit and stand and work. But your bodies would only be moving carcasses without souls, fit carrion to provide food for the crows.

Gentlemen, it is the Government—it is they who want to seduce God's soldiers. We want to bring them back to their pristine loyalty. The law says that in any case there is an exception (Reads)—"It does not amount to an offence within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable ground for believing that such statement, rumour or report is true."

The Court.—Read out the whole section, Mr. Mahomed Ali.

M. M. Ali.—I will, sir. I will not leave out one jot or tittle. The Government will have its pound of flesh. In the case of Shylock, they allowed him only the flesh; but they would not let him take a drop of Christian blood. But you can take that too from me, full measure and overflowing. That exception requires that you establish the truth of the statement or reasonable grounds for your belief in its truth and that you made it "without any such intent as aforesaid. "There is no God but the one God and Mahomed is His Prophet"—Is that my statement? No, it is the

creed of all Mussalmans. It cannot be an offence to declare that creed even if it is likely to seduce" a man from his allegiance to a King or Government that demands obedience from him in matters involving disobedience to God. Is it an offence to say so? The next offence is asking ten persons or more to commit a similar offence. But for that too the first question is the question of statement. Whose statement? It is not my statement, it is the statement of God. It is a declaration based on the law of the Quran. It is well-known to every Mussalman who understands the Quran. It is not a matter of my own opinion. Let me transport you before I am transported, say to a place where Arabic is understood. Say, Aden. If a Somali or Arab soldier who understands the Quran in Arabic hears Maulana Hussain Ahmad Sahib who was a teacher in Arabia, reciting verses from the Quran against the killing of muslims. Or supposing as I said yesterday, a man comes and telling him he is ordered to Mesopotamia to fight against the Moslems asks him about true religious law, and if he says that it is religiously unlawful for a Muslim to fight another Muslim—would it come under the law? It is a statement: but not his own. It's God's and it is true. Supposing the Government wants a Hindu to kill a cow and some Brahmin tells him that the cow is a sacred animal; it has got to be protected; it is the mother of millions of orphans and feeds us all—it is a symbol of innocence and of helplessness among God's creatures needing our chivalrous protection—you have got to protect it. Is the Brahmin guilty of an offence to seduce that Hindu from doing his duty even though the Army Commander needs that cow for the army's food? I challenge the Army Commander or for the matter of that, the Commander-in-Chief to say that it is the duty of a Mussalman soldier or a Hindu soldier to go against his Faith in spite of the fact that the Viceroy has disallowed the Resolution to be moved in the Legislative Assembly, the Council which I was invited to be in. The "Pioneer" said—"You can influence people. You have such wonderful influence over the people you have got such talents—you have got the wonderful gift of attracting the masses—will you not come to the Council?" I said in a speech of mine which is the subject of another prosecution, I said that I cannot, because whoever goes to the Council has got to pass through the 'Crawling Lane' on his belly and the guard of honor is provided by our sisters of Manianwala whom a cowardly British bully sought to dishonour.

The Court.—(Inaudible) What is your point?

M. M. Ali.—To that Assembly I was invited to go where no one is allowed to move a resolution like the one disallowed by the Viceroy, that

no man, no Mussalman in the Government service, particularly in the Army, shall be compelled to go against his religion (Reads the form to be filled in by a soldier before he is enlisted).

(The Judge interrupted the Maulana again and asked what he wanted to prove).

M. M. Ali.—I want to show what the man is required to do when he joins the army, what is and what is not his duty as a soldier (Reads). Mark, gentlemen, the question is—"Are you willing to go wherever ordered by land or sea and allow no caste usage to interfere with your military duty—" there is no question asked of the man—"Will you do anything which is against your Faith" or "Will you have any objection when you will be asked to commit a sin," or "are you willing to go to Hell by land or by sea" (laughter) ? There is no question like that. The P. P. asked me,—he said to me if some body believes in human sacrifice and your child is demanded you will be the first to seek the protection of the law. In any case, as a Non-Co-operator these days, I do not want to seek the protection of his law. Neither do I believe that there is any sect that can demand such a sacrifice from other people. The only sect that can demand human sacrifice of other people's children is the sect of the Militarists. They demand it—their Moloch of greed demands it—their Moloch of Imperialism demands it—their greed for Dominion demands it—they want that on the high seas—on God's big broad oceans, whenever a foreign ship passes one of their's, it should dip its flag in recognition of the boast that England is "the mistress of the seas." It is these people who want such human sacrifice.

The Judge asked me.—"But what about the thief? Do you want that the thief's hand should be cut off?" I said, if the Government was an Islamic Government, I would require this of it. I will have the adulterer stoned to death too, though adultery is no offence in English law. My bargain as a Muslim with an Islamic Government is different from my bargain as a Muslim with a non-Muslim Government. From non-Muslims I do not require that they should do anything for me, except permit me to hold my own religious opinions and act up to them with impunity. My religion can impose its obligations only upon me, and not upon others. There is an obligation upon me to tell God's own truth that it is religiously forbidden to join the British Army and to fight a Muslim without a just cause, and that it is unjust to kill a brother Muslim at the bidding of the Government, which is next to infidelity. The Prophet said—the last

thing that he said collecting all the people who had gone to the pilgrimage together, some 173 thousand people assembled together at Minah, and the Prophet asked—"What day is it"....(interrupted).

The Court.—I would ask you to stop. Never mind about the Prophet.

M. M. Ali.—(Indignantly) I must mind about the Prophet. I think you should withdraw that.

M. Shaukat Ali.—Blasphemy and impertinence !

M. M. Ali.—You *must* withdraw that. You must make amends. I have got to mind about the Prophet. I have to take a man's life who insults that Prophet.

The Court.—You must stop. You cannot go on.

M. M. Ali.—I am doing what the law allows me. The law says that I am not to seduce troops from their duty. I say it is not a part of a Muslim soldier's duty to kill a brother Muslim. And I am here entitled to argue this till eternity. So long as I want to explain my position I have this right. Take away this right and end this farce. What's the use of this farce ? Take out a shooting and shoot us out of hand, or if you prefer to keep up this farce of a trial, try us after our death, as Lord Nelson once did. I say that no man is required to go against his religion—military duty does not inculcate this.

The Court.—It is irrelevant.

M. M. Ali.—I am explaining what my religion says—I have given it in my statement in the Lower Court. It is perfectly relevant.

The Court.—Sit down.

M. M. Ali.—I have not yet done with Sec. 303 and have not even touched the charge under Sec. 117 against me. I have not said one word about that. Am I to be punished without saying one word about it ?

The Court.—I will not give you a right of speech.

M. M. Ali.—Will you show me a single sentence in your law books that the Judge has the power to take away that right ? You have already taken away one of my rights by not allowing me to make a

statement before the Prosecution addressed the Jury. Your own Bombay High Court says that and the Public Prosecutor agrees. I do not know if the Judicial Commissioner of Sind has laid down another law. Now you are going to stop me again from addressing the Jury. You can object to a particular part of my address. You can say—do not say this. But I cannot understand how you can stop me altogether by saying that you will not allow me to say anything more. (The Court kept on saying 'sit down,' 'I won't hear you.')

M. M. Ali.—I am explaining that it is not the law, that it is no part of a Muslim's duty to go against his religion. Have I not got to prove that this statement contained in the resolution is a true statement, and not a false statement? Is it relevant or not, I ask?

The Court.—Entirely irrelevant.

M. M. Ali.—"Entirely irrelevant;" therefore I have not got to argue about that?

The Court.—I have allowed you to argue.

M. M. Ali.—The trouble is that you are intervening me too much. I say that first of all I do not come under this section. I have got to prove what my Faith is and that it is not the soldier's duty as such to go against his Faith. I have got to prove why the declaration was made. And I have to prove that that declaration is a true statement.

The Court.—It is not relevant.

M. M. Ali.—Do you think that you are authorised by law to take that right from me? The law says it does not amount to an offence within the meaning of the section (reads the first part of the exception again).

The Court.—"And."

M. M. Ali.—Never mind about 'and.' I am arguing that it is a true statement. I am not yet arguing about the intention.

The Court.—I do not want to hear you.

M. M. Ali.—It is for the Assessors; at any rate, you cannot take away the Assessors' right. They will have to give their opinion about this whether I am guilty or not. It is according to law. And the law says

this (reads again). I cannot take your word for it. I cannot really. I cannot take any man's word as against the clear provision of the law.

The Court.—Argue your case.

M. M. Ali.—It is not *your* case that I am arguing ! (laughter). Well, gentlemen of the Jury.....(interrupted).

The Court.—I do not want to hear you.

M. M. Ali.—You may not hear me as you have done on many other occasions. You have slept through a great deal of evidence that was being read out. You may sleep now. But I have got to address the Jury.

The Court.—(With apparent anger). Will you sit down ?

M. M. Ali.—If I don't ?

The Court.—I shall put you in custody.

M. M. Ali.—Do !

(The Superintendent of Police was here called to make the accused sit down but retired without touching him, leaving him standing.)

(The Court directed the Sheristadar to call accused No. 2 Maulana Hussain Ahmad. The Sheristadar approaching called out but Maulana Hussain Ahmad did not utter a single word or budge an inch.)

M. M. Ali.—(Not minding this interruption) now, gentlemen of the Jury.

The Court.—Do not interrupt the Court.

M. M. Ali.—I am not interrupting the Court. Rather *you* are interrupting me. I have got to argue regarding this exception. I have got to deal with this. Take away the charges under Secs. 505 and 117 against me if you can and I shall stop. You have got the power to amend the charge up to the last.

The Court.—I cannot allow you to discuss religious law here.

M. M. Ali.—There is no question of religious law. I am arguing about the 'law of the land,' as you call it. I have got to show to the

Assessors that this declaration of statement contained in the resolution is true because it is based on the Quran and the Hadis.

The Court.—There is no necessity of it.

M. M. Ali.—The necessity of it is or not, that I have got to consider myself, not you. You had no right to stop the Prosecution witnesses. You could not have stopped them unless you said that their evidence was inadmissible. You did not stop the Public Prosecutor. He was to prove what he thought was necessary. But you will not allow me to prove what I think is necessary,—to prove that it is a true statement of Muslim law that I laid down that it is *haram* to serve in the army ! I have got to prove that from the Quran and the Hadis, material or immaterial, I have got to do it and I am to do it from the Islamic law. I have got to take my law from the Quran and from the King. The King gives me protection for following the Quran's law in those Proclamations. That is the King's law. If you do not obey that, then why is the King's portrait over there, (pointing to the portrait of King Edward hung upon the wall.) I have got to take my law from—you have got to take the law from the King. I have got my statement based on this King's law. I do not want to create a scene. I am not here for that purpose. I have not shown disrespect to you even though I could not show any respect to the Court as part of Government. I don't want to be obstinate and cheeky. But I cannot have my right brushed aside.

The Court.—But you take so much time.

M. M. Ali.—Yesterday you sent me word that you will give me half an hour more to-day to discuss the supremacy of religious law before I came to the legal point and the facts of the case. I have already finished with that. I said that religion was to be an exception in every case. Now dealing with the law of the land, Sec. 505, I have got to prove that the declaration in the resolution that it is religiously forbidden to serve in the army, is a true statement and therefore I come under the exception to Section 505.

The Court.—Suppose it is accepted that it is a true statement ?

M. M. Ali.—Let the Assessors accept it. I let them give it to me in writing. Will they give it to me that this is considered to be proved ? Tell me that this is proved—that my statement is true. I will go on. Then I will not argue one word more about it. Ask the Public Prosecutor whether I have got the right or not.

The Public Prosecutor.—We admit that the passages cited in this statement before the Lower Court are in the Quran.

M. M. Ali.—I want you to admit more than that. I want you to admit that this statement for which I am charged under Sec. 505 is in accordance with the Quran and the Hadis.

P. P.—We can't admit that.

M. M. Ali.—If you won't admit I have got to prove it. Supposing a Christian is charged for making a statement of his belief in God the Father, God the Son and God the Holy Ghost. He says that he has got to prove that that is the Christian belief and is a true statement. He says "I will show it from the Bible, I will show it from the Epistles—I will show it from the Gospels—I will show it from the Prayer Book." Will he not be entitled to do that? Will I, a Mussalman, be a fair judge—do you think it will be fair of me not to allow him to prove that this is a correct statement of the Christian Trinitarian's Faith?

The Court:—(Nodding his hand) Sit down.

M. M. Ali.—I cannot sit unless you admit that my statement is true. I should like to say one thing. I really do not want to be obstinate. I do not want to be needlessly importunate, out of sheer cussedness and ill-will against the Court. I do not want to show any disrespect to *you*. This does not tally with any part of my character as an accused person or as a Non-Co-operator. But at the same time I want to stand on my right.

The Court.—You are wasting the Court's time.

M. M. Ali.—I am not wasting anybody's time. I just want to convince the Jury that the statement is a true statement

The Court.—It matters not.

M. M. Ali.—It matters a great deal to me. It matters much so far as I am concerned. It matters great deal to prove to the gentlemen of the Jury that this is in accordance with the Quran and Hadis and that I did not fabricate it. I may have made a false statement. Supposing I commit a rape and I come in before the Court and I say that my religion allows it. You can say—"show it to me from your religious law." You will not take my word for it and you will have to allow me to prove it. What is it after all? I am not asking for protection for a murder that I have

committed—I am not asking for protection for arson that I have committed—nor am I seeking protection for loot. Loot becomes sacred when the Army Commander orders it. Murder is no murder when the Army Commander Commands it. In my case too, when the Quran Commands, murder is no murder. So when I referred to the Quran you can say “show it to me.”

The Court.—Suppose we admit it for argument’s sake.

M. M. Ali.—I want it to be admitted for all purposes. I may not argue one word about the intention. Gentlemen, I am not speaking in my defence. But I must prove that this was a correct statement. I had the same difficulty with my friend Mr. Montague. He said “far be it from me, Mr. Mahomed Ali, to intervene in a discussion about your religion.” I said to him “please do let us discuss it and let me prove to you what my religion is.” I was actually in tears before him when I told him it is no pleasure to me to be against his Government. He respected those tears. I explained the religious law about the Khilafat and the Jazirat-ul-Arab and he had to listen. I had to explain my religion to Mr. Lloyd George also and to some other members of the Cabinet and they had not said that they had nothing to do with the Quran. I want to prove that this is a correct statement and you must not take away my right to prove it. Will you allow it?

The Court.—If you will only do it in a very short way. (The whole house burst into peals of laughter at the Judge’s relaxing at last.)

M. M. Ali.—(To the Court) Why did you not say so before? Of course, I will do it in a short way—in fact in a *very* short way.

The Maulana then quoted some three or four verses of the Quran already cited in his statement in the Lower Court and added short comments to prove that these made service ‘haram’ in the British Army which was being used to kill Mussalmans without just cause or to destroy the Khilafat and the temporal power of Islam. Thereafter he cited a few of the traditions of the Prophet cited in the Lower Court statement and explained their bearing on the declaration contained in the Resolution. The verses and the Hadis cited were the following :—

1. “It is not for one of the Faithful to kill another but by mischance”—and thereafter follow the severe penances prescribed even in cases of such mischance.” (Sura-i-Nisa, Chapter IV.)

2. "But whoever shall kill one of the Faithful wilfully his recompense shall be Hell; for ever shall he abide therein; God shall be wrath with him, and shall curse him, and has prepared for him a great torment" (idem).

5. "O ye Faithful: devour not each other's substances falsely except that it be trading among you by your own consent; and kill not your own people, verily God is unto you merciful. And whoever shall do this of malice and wrongfully, we will soon cast him in fire, for unto God is this easy. If ye shun the great things that are forbidden. We will blot out your faults, and we will lead you into Paradise with honourable entry" (Idem).

4. "After recounting the story of the first killing, the murder of a brother by a brother, the crime of Cain in spite of Abel's declaration of his own doctrine of non-violence, the doctrine of every Moslem in like circumstances, "Even if thou stretch forth thy hand against me to slay me; verily I fear God, the Lord of the Worlds," the Quran says: "For this have we ordained unto the children of Israel that whoever slayeth another soul unless it be for man-slaughter or for spreading disorder in land, it is as though he slew all mankind; and whoever saveth a life it is as though he saved all mankind alive. (Sura-i-Matdah, Chapter V).

5. "And (the urvitors of the Beneficent God are) they who call on no other gods with God, nor slay the soul God hath forbidden to be slain, except for just cause, and commit not fornication, for he who doth this shall meet the reward of sin (that part of Hell which is known as Asam). Doubled unto him shall be the torment of the Day of resurrection, and therein shall he remain, disgraced for ever." (Sura-i-Ai-Furqan, Chap. XXV).

1. "Shedding a Moslem's blood is not permissible except in three cases, when a life is taken for a life" (i.e., as punishment for a renegade deserting his side) (This is to be found in the most authentic collections of Bukhari, Moslem, Tirmizi, Abu Daud, Nasai and others).

2. "A Moslem is he from whose tongue and hand a Moslem remained immune."—(Bukhari-B, Moslem-M, Abu-Daud-Ad, Tirmizi-T, etc.)

5. "To abuse a Moslem is wrong doing; and to war against him is infidelity ('Kufr'). (B. M. T. AD.) (Nasai-N : Ibn-i-Maja-IM).

4. "He who bore arms against us is not from among ye," i.e., is not a Moslem any longer (B. M. T. AD.).

5. "Even if the inhabitants of all the heavens and all the earths were accessories in the slaying of a single Moslem, God will certainly push them all into fire." (T. Behaqi-BQ—Tibrani-TB).

6. "Who so assisted in the slaying of a Moslem even with half a word, shall meet God with this written between his eyes ; "Despairer from God's Mercy (i.e., he shall receive no portion of God's abounding Mercy)" (IM : BQ : Asbahani).

7. "God may, it is to be hoped, forgive every sin, but not the man who died while still an infidel, nor the man who killed a Moslem wilfully." (AD : Ibn-i-Haban : N : Hakim).

8. "Let him who can see to it that there is not between him and Heaven even a handful of a Moslem's blood, even as much as a fowl which is killed for food, for whoseover such a man will present himself before any of the gates of Paradise, God will interpose Himself between him and Paradise." (TB : BQ).

9. "When two Mussalmans quarrel with each other and use their swords, both the slayer and the slain shall be cast into the Fire." When the people said: "O Prophet of God, the reason for the slayer being cast into the Fire is plain but why the slain as well? The Prophet replied, "Because he had intended to kill his companion" (B : M L T : etc.).

This statement of mine, gentlemen, is entirely based on the Quran and the Hadees as you can now see for yourself and Maulana Hussain Ahmad Sahab will after me prove it to you still further. More than this, you have got the correctness of it established in the Fatwa of the Ulama. But that has been turned from proof of our innocence into proof of our guilt.

Gentlemen, I do not know whether a man is exempted or not in the army from observing his caste usages. This form includes merely a question about them and we do not know what happens to the intending recruit who wishes to observe them. But this is not a caste usage. It is a case of going against religious law and if a man's military duty was to go against the religious law—if the Army Commander thought so, he should have asked this question. Let them ask every Hindu soldier—let them ask

every Mahomedan soldier and note what they say. Dante wrote in his *Inferno* and Milton quotes it in his *Paradise Lost* also, that this legend is inscribed over the gate of Hell: "Whoever enters here must leave all Hope behind." So it should be inscribed over the portals of the British Indian Army: "whosoever enters this must leave all Faith behind." On a famous occasion the German Chancellor had said: "Necessity knows no law" and those who execrate this lawless doctrine are being punished as law-breakers. What we want is that Government should be straightforward, honest about it. At present people go to the Army apparently with their eyes shut. We ask that they should go with their eyes open. If they join the Army knowing very well that their religious law and obligations on them will not be respected, but would be sacrificed to the Moloch of military exigencies and that, one Queen's Proclamation and two King's Proclamations will afford them no protection, nobody will then blame the Government. All the sin would be those people's who knew all this and yet joined the army. But what is it after all that Islamic law demands to-day? For what offence does it seek the secular Law's protection? Not for human sacrifice! I do not say—"shoot your officers—kill them"! No, on the contrary I demand that they be not guilty of the human sacrifice of their Muslim brothers—of fratricide. When you took them to fight the Germans on the outbreak of the War, I did not say—"Do not fight with them." I do not say, if there is disorder in Karachi and Muslims are rioting, that Muslim soldiers should not go and stop that. In this form (showing the form of Enlistments) all sorts of questions are asked. The form says "the following 9 questions" but there are really 14 and not 9 questions in all (Reads all the questions.) I do not know what happens if he says he is unwilling to be vaccinated or even to be re-vaccinated—as some Hindus may well do on account of the vaccine or lymph from the cow. I do not know what happens if he says he is unwilling to cross the black waters or give up a caste usage. The solemn declaration of the intending recruit only says that the answers are true and that he is willing to fulfil the engagements made without explaining what they are. But let us presume that he has expressed his willingness to be vaccinated and re-vaccinated and to go wherever ordered by land or sea and allow no caste usage to interfere with his military duty and that there are the engagements. But where is the 15th question, which should have been: "Are you willing to do anything you are ordered and allow no religious commandment to interfere with your military duty? Are you willing to forego your religion?" Where is such a question in the form? If the man says "Yes" then it is alright, and if he refuses, you can chuck him out,

But you don't ask him this question, you dare not do that—and yet you take him in and if he refuses to commit the most grievous sin short of becoming a renegade and an infidel at heart as well as outwardly, you say he has failed in his military duty. But that is, according to your own form of enlistment, no part of a soldier's duty as such. Therefore, Sir, it is not a question of seduction from duty. As I have already said, we are teaching him his first duty—that his first duty is to God and the second duty is to his country and his King. Gentlemen of the Jury, the Proclamation came, as you know, after the greased cartridges affair and the Mutiny, and it was to repudiate precisely this unlimited connotation of military duty that it was issued in 1858. But what is the tearing with one's teeth of greased cartridges or eating a whole pig compared to the sin of killing a Muslim? I have already stated in my statement in the Lower Court and I repeat it that if a man is threatened with death unless he consents to take pork he may not only take it, but *must*, and if he is killed on account of refusal to do so, he dies a sinner. In like circumstances, he may even declare that he is a *Kafir* if he continues to be a believer at heart, though it is preferable not to do so, and if he is killed on account of refusal he dies a martyr. But in like circumstances he must not kill or dismember another Muslim but patiently submit to be killed instead. And you dare not ask a Mussalman to touch cartridges with pig's grease as part of military duty since your experience of 1857 and the Proclamation of 1858, and yet you call it part of military duty to kill Mussalmans which is far worse than eating pork and worse even than outward apostacy. The absence of such a question as I have suggested means that the Government in first told what it would lead to. We consider it a part of our duty therefore to remind the Muslim soldier of his duty to God to demand from a Mussalman that he must carry out his God's law. That is not seducing him from doing his duty in the army, and in any case, he need not desert or fail in his duty but appeal to Government through his superior officers that such duty as is against his religion may not be required of him. There is therefore neither a likelihood nor intention of seducing a soldier from his duty as such.

Now comes Sec. 117. Against me this is the only other section. (Reads) "Whoever abets the commission of offence, by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

But where is the *offence*? There was no criminal conspiracy as I have explained under Sec. 120 B. There was no attempt made by us or by a fellow-conspirator under that section and section 131 as I have also explained.

The Court.—Mr. Mahomed Ali, you are charged that you at this meeting and other places abetted ten or more persons to commit.....

M. M. Ali.—It says whoever abets the commission of an offence by the public generally or ten or more persons, etc. But what is the *offence*? The offence is to ask the Muslim soldier to do his duty to God—to bring the law of Islam home to him. But that is no offence. Therefore, I have committed no offence. And when there is no offence that I abet the entire ground is taken away from under the feet of the Prosecution.

In the evidence you have it that there were two or three thousand people and two or three gentlemen on oath declared that there were only two thousand people and that they were mostly Mussalmans. I was the President at that meeting—and am in a better position to tell you how many people were there. When I returned to Bombay from Karach' I said to Mahatma Gandhi I was astonished to see that at least half of that big audience was composed of Hindus. But that shows that the Khilafat is a national question and not an exclusively Muslim question. The Marhatta gentleman who told you about the Gokok resolution said that there were fifteen hundred people and the whole area of that Conference Pandal was not more than that of this hall and its Verandahs. The Pandal where the Karachi All-India-Khilafat Conference was held, it was not far from this place—that Pandal was ten or fifteen times as large as this hall—that pandal was absolutely packed not less than ten thousand people were there. Therefore it is not a question of instigating ten people but ten thousand people to do what we asked them to do in that Resolution. But we did not instigate them to commit any offence. Cook your hare by all means, eat it, digest it. But you must catch your hare first. But my friends—(pointing to the P. P. and Mr. Ross Alston) they have not yet even scented their hare much less caught it. They have not proved that there was really an offence at all that we abetted. What was it that I told the people?—To bring it home to them that they must do their duty to God. (Reads from his copy of the Resolution but the Judge interrupted). (To Court) I must read my copy because I must give

you the exact words of the Resolution as it was read out, moved, seconded, supported and passed—the *ipsissima verba*. (Reads in the original Urdu). Not my opinions or statements or even the Karachi Conference's declarations, but the commandments of Islam in this behalf were to be brought home to the Muslim soldiers. Has it now become an offence even to declare that it is the duty of Mussalmans to communicate the law of Islam itself to the Muslim soldiers? I said yesterday that the Government could not be able to find a single Mussalman who says that this is not the law of Islam. But suppose that they find such a man, suppose they create such a man for we may even credit them with the function of the Creator's when they demand obedience to their behests as against the Creator's commandments—they create such a man and make him a Moslem also, and he says that the law of Islam says that every word of command in the army is God's own commandment—when the Commander says shoot a Muslim—he should be instantly obeyed. What do we ask? We say, carry the religious law of Islam to the soldier—the Muslim soldier. I don't say carry my interpretation of it. I say—carry the law of Islam on the subject to the Mussalmans in the army. Is it an offence even to propagate the law of Islam? Supposing the man is entirely against me. He says—No, it is not a sin to kill a Mussalman—it is the bounden duty of a religious Muslim to kill a Muslim when the Commanding Officer orders it. I don't say to him—don't carry this to soldier, but take the law that I lay down. I simply ask him whatever the Islamic law says that he has got to carry to the Muslim soldier. I knew a gentleman who got a title and whose sons got several posts because he happened to hold certain very peculiar doctrines about the Muslims and particularly the Muslim soldier's duty to the (*Hakim-i-Waqat*) — ہاکمِ وقت—the temporal ruler for the time being. He used to engage Maulvis to go into the requirements and preach his doctrines of loyalty at all times and at any price. But now it seems even that would be an offence, for the P. P. says it is an offence under Sec. 117, I.P.C., to declare that it is the duty of Mussalmans in general and the Ulama of Islam in particular to bring the law of Islam home to Muslim soldiers. Or is it an offence only if I ask ten persons or more? If you ask two or three men, it does not matter? If you ask ten the moment you come to ten—اٹھارہ—that is ten complete" or, you ask the public generally, you will be hanged. At any rate, gentlemen, you must go by what I have said and what the shorthand C. I. D. man has taken down and not what some pitiful Police liar has sought to put into my mouth.

(Maulana Mahomed Ali sent for Inspector Lakht Hussain's transcript of the Urdu Resolution as read out by him at the Conference and found it tallied exactly with the copy he had from the Bombay Central Khilafat Office on the letter paper of the Reception Committee of the Karachi Conference showing that it was made at the time of the Conference itself. But the translator of the Government had mistranslated اس بار پر شریعت کے احکام into "these commandments" which would make section 117 I. P. C. applicable. If section 505 was found to be applicable, whereas the actual words of this part of the Resolution did not refer to the declaration of Islamic law that military service was *haram* contained in the earlier part of the Resolution, but to Islamic law generally).

Gentlemen of the Jury, I am not anxious to get off, I am not anxious for my defence. I make no defence whatsoever, I have to explain the law of Islam to you and explain the bearing of that on the position we have taken up. I have not cross-examined witnesses nor produced evidence on my own side. But I want you who are mostly my countrymen though co-operating with this Government to consider this. You will find that in the history of the world many celebrated trials have taken place and many great people have been declared guilty of many offences. In English history itself even poor Joan of Arc was killed for a witch. But with what result? Her golden statue stood before my hotel in France and while I was there the Catholic Church led by the Pope and the College of Cardinals canonised her and what did the successors of those who had burnt her do? Why the British army joined the French in honouring her memory and in placing wreaths on her statue? I was present at such a scene. George Washington was a wicked rebel in the time of George III. What is the verdict of the British Government to-day? He is the greatest patriot.

I should like to address a remark or two particularly to the solitary Englishman on the Jury. Englishmen are not bound to follow the majority of their countrymen, particularly in unrighteousness and injustice. Believe me, throughout English history it has been the minority that was mostly in the right and at any rate it was the minority that began great and good movements. A great cause had never been started in the world's history by the majority. It was not Pilate that was crucified. It was Christ—God's peace and blessings be on him! Pilate was the judge who pronounced the verdict against Christ! But who pronounces the verdict now and who will pronounce it hereafter? On the Last Day, the Day of Judgment it is God that will pronounce the sentence on Pilate who did

not know what was truth, and ask that famous or infamous question so cynically. But where is Pilate now? Who ever remembers him the great crucifying Judge, except for Christ's crucifixion. Now to millions of human beings Christ is the Saviour. But who am I, a humble individual to compare myself with Christ who am not worthy even to take the dust off the feet of Christ? But as the Poet has said—

“Weakness never need be falseness, Truth is Truth in each degree.

“The Thunder pealed by God to Nature, whispered by my soul to me.” And in the thunder peals of British howitzers the still small voice of humble man's soul has whispered into his ear this little bit of truth—God's eternal everlasting, soul-sustaining Truth—that he must not stand by and see Muslims being slaughtered by Muslims in spite of God's clear law, but must preach against it and propagate God's Truth, unshaken by fear of man and untroubled by mundane consequences.

Gentlemen, take another case—the case of the martyrs of Karbala. The Prophet's grand son had only 72 men and Yazid's army had thousands and they killed him. He was then in a small minority. But for thirteen hundred years the mourning for that vile deed—the deed of the Government in Power—has been going on. Every Muslim mourns for Hussain, Hussain the victim and not for Yazid the proud victor, and many Muslim cities have a quarter just outside known as Karbala, while no trace of Yazid's grave can be found anywhere. So, gentlemen, do not think of the consequence of your verdict to-day or to-morrow, but of its ultimate consequences here to human freedom and hereafter, in another world. And you have got to judge for yourself. Ralli Brothers cannot judge for you. Forbes, Forbes and Campbell who objected to a small white Gandhi cap cannot judge for you. Mr. Lloyd George cannot judge for you. God on his Judgment Day will ask Lloyd George about his soul, not about yours, and he may have much to answer for. God will ask you about your individual soul and none others. He won't ask Ralli Brothers or Forbes, Forbes and Campbell about it. And if as a Hindu you believe only in punishment in this very world through the cycle of transmigration of souls, you must remember that according to your belief, God's Judgment will be visited upon here and not hereafter and you will be judged the moment your soul quits its abode in your body and seeks another. Whatever your creed, your *Karma* is your own and the final Judgment does not rest with you any more than with the Judge there but with God, the Lord of all the worlds.

Gentlemen, I have taken much of your time, far more than I had intended to take or would have taken were it not for being constantly interrupted and stopped. But as I said at the very outset, had it been a case of my individual defence or of all of us accused together only, I would not have argued at such length and with such persistence. I do not seek to avoid punishment for the jail is the gateway to India's freedom. Had I sought to avoid punishment, I think I would have smashed the entire prosecution and proved my case according to the canons of this very law—the so-called law of the land. I could have cross-examined the witnesses and torn their evidence to shreds. I was really tempted to do that in the case of Col. Gwyer with his enlistment forms and his "soldier's duty as such." I think I may say this though I do not pretend to be a big lawyer like my friend the Public Prosecutor or his little assistant. Nevertheless, the case is so hopelessly weak that it could not keep us shut up in the jail for a day even if the Ex-Lord Chief Justice of England himself, better known as Rufus Isaacs, K.C., had his Government's brief. But although a Non-Co-operator and therefore debarred by my duty as such to defend myself, I had to speak up when the Viceroy indulged in his hill top *obiter dicta* on a matter which he knew and admitted was *sub judice*. He said that this was no case of an attack on Islam or religious interference. What could be a more flagrant case of both? If the tallest poppies are to be cut off for upholding Islam and its laws and you ask those who remain "What is your opinion about the laws of Islam" which only means "your turn next if you dare to tell the truth" and you cut off their heads too if they still dare. The result may well be that there will be none to stand up and oppose your will. And then you will say "We interfere not with your faiths." If this is non-interference, you can enjoy the self-complacence induced by such boasts of toleration. But that is not all. We are asked to look at him the tallest poppy of the Israelite garden in England—as upon a certificate of British toleration. But, gentlemen, I cannot imitate the Ex-Lord Chief Justice of England and Viceroy of India. His law is a law unto him and my law is a law unto me. The example of his people, if I may say so without offence, is constantly mentioned in the Quran for the Muslim to avoid and take heed from. According to the Quran, after Moses (on whom be God's peace and blessing) had brought the Israelites safely out of Egypt and they had been delivered from the tyranny of Pharaoh, they were asked to march on to the Promised Land. But they said, it is ruled by giants "We shall never be able to enter it so long as they are there." And they said to "Moses : Go thou and thy God and fight them—we are the while sitting here."

Well, gentlemen, that's not an example that I am asked to follow in the case of my holy land but to avoid I cannot take that law. "It is ruled by powerful people." "They are giants" "go thou and thy God and fight. We rest here." But I am not here to question the propriety of that example or that law. So far as I am concerned, the Quran is my law, giants or no giants, and I shall fight when my God demands it of me and I shall not rest, nor ask Him to fight the giants himself. And if I am to be hanged for it—for it is not Sec. 120A or B then, but 121, waging war against the King, gentlemen, I will still say that this is my law and that it is right and even my carcass hanging from the gibbet will I trust say the same ! Do not therefore think of saving me, gentlemen, from transportation for life. But if you have a God and if you have a soul to save and if you have faith you will decide according to your conscience. You are not to consider whether you are servants of a particular company—of the Greek firm of Rali Brothers—of Forbes, Forbes & Campbell—or the Customs office—you are to think nothing of that, but only of this that you are slaves and servitors of God. Gentlemen, this is the one important matter—so judge according to your conscience—it is not to save me but to save yourself. "When the Judge has said "I cannot allow this" and wanted to stop me, I said to him "then why not stop this farce and hang me outright." Well, he smiled and replied that it was not only a matter between him and me, but also between him and the public and I had replied that the public had already given their verdict both in this Hall and also in the streets where they crowd in their thousands and cheer us going and coming and the old women in spite of their *Purdah* come out—as my own mother had done since this trial and make signs to us indicating that they want to take off our troubles. Well, gentlemen, my defence is before my God and my fellow-countrymen. Here we are now at the bar of this Court as prisoners and accused persons. But when before the judgment seat of God, the Judge, the Jury, the accused all the co-accused, the P. P. and his assistant, the king himself—every body, is assembled and God asks "whose is dominion to-day?"—what will be your answer ? You will say: "Thine is the Power, the Glory, Thine the Kingdom, Thine the Dominion." You pray now "Thy Kingdom come." But, gentlemen, His Kingdom *has* come. God's Kingdom has come. God's Kingdom is here even to-day. It is not the kingdom of King George, but God's and you must decide on that basis and I must act on that assumption. That is why I say I will follow the law of King George so long as he does not force me to go against the law of my God. I have

no personal malice against him. I have none even against the Judge here. None against the Government. Not a single instance of that can be quoted from my public speeches. No, gentlemen, we must act from motives of public good not of private malice. Once the Prophet's son-in-law, cousin and successor, Hazrat Ali was enraged against a Jew who had insulted Islam, and the God of Islam and the Faith of Islam and Ali had that very instant brought him down to the ground and had jumped on top of him. The Jew thought that he was going to be killed and in sheer desperation spat on Ali's face. You have seen, have you not, a vessel full of milk on the fire and about to boil over and you have seen how it subsides the moment a little cold water is poured in. The Jew's spitting acted just in that manner and strongly enough the wrath of Ali subsided at once and he left the Jew and walked away. But the Jew was so astonished at this unexpected turn of events that he ran after Ali and caught hold of him and said " This is very strange. When I said a word you forced me down and would have killed me, and when I spat on your face in desperation you leave me?" And Ali answered —" You insulted God and I could have killed you, but when you spat on me I got enraged on my own account and personal ill-will could not go well with public duty. I could be an executioner for the sake of God but not a murderer for Ali." Gentlemen, we two bear the revered name of Ali and I hear also the name of another even greater than Ali. I will not be a party to the killing, of even of a gnat for personal malice, *but* for the sake of my God I will kill all, I will not spare any one—I will slaughter my own brother, my dear aged mother, wife, children and all for the sake of God—so help me God!" (And as he said this his voice failed him, drops of tears rolled down his cheeks and he sat down completely overcome.)

MAULANA HUSSAIN AHMED'S ADDRESS TO THE JURY.

After Maulana Mahomed Ali finished his address to the Jury, Maulana Hussain Ahmed gave his address.

Maulana Hussain Ahmed said :—

At the time of Mutiny of 1857 to allay excitement of Indians, the British Government had issued Royal Proclamation which contained all satisfactory hopes. It was a foundation of British rule in India. It is laid down in the end of it that the Government will work for welfare of Indians and that Government will not expand its territory and will fulfil promises to save rights of the Princes and people.

The same treatment will be meted to Indians as to colonial residents. Amnesty was given to rebels. It was also announced that Indians would be given religious freedom. History shows you that in 1857 rebellion occurred on account of religious feelings which are absent in people of other countries of the world. History proves that Indians sacrifice everything for religion and this should be so because God requires it. The worldly gain is nothing before divine grace.

Religion is law of the King. For this British statesmen issued a proclamation for Queen Victoria. It was not from Queen alone but by Lords and Commons. It was confirmed by Edward VII and King George.

Its portion relating to religious freedom says that it is not their desire to impose their religious convictions on their subjects and no one would be molested in observance of his religious obligations. All will be equal under law. "We order our officers not to molest religious freedom of people otherwise they will incur our displeasure." After this the Indians were pacified because they believed that it was a Royal Proclamation and would be followed. But it is painful to observe that it has not been followed.

The resolution which I moved is not a resolution but a religious obligation for all. It is a question 1300 years old and not new. It is termed as resolution because 2 other passages are associated with it. I know my own religion, Hindus know their own. That it is a religious matter, is not for Lord Reading or the Judge to decide but for Ulemas to settle. There are 2 factors which show that it is a religious doctrine, namely, the wordings of the resolution and the contents thereof. It has been said that police service is Haram. Haram is a religious word. There are 7 such words. Haram is called that where there is a positive proof according to Shariat. Haram is that which is met with punishment of God's wrath. Rape is Haram in religion. One who commits it meets with torture, one who abstains from it, does good thing.

[M. Mahomed Ali wrote down those 7 categories including 'Haram' and gave to the Judge who required it.]

No man can be called a Muslim unless he believes to be true every word of Quran. If, for worldly ends, he does not call Quranic Hadis true, it is Haram. Government has established police for their political ends. A soldier has to draw his sword on every man—Muslim, Hindu or any man, and has to demolish houses and devastate country. To kill Muslims is Haram, hence this service is Haram. I am going to be brief. In Quran

in 7 passages God has forbidden to kill Muslim, and in 1 passage the punishments are prescribed for him who violates that order. Here the Maulana quoted and explained some Ayats of the Holy Quran and the traditions of the Holy Prophet all of which, he said, enjoined upon Muslims not to kill each other and be Kafirs.

The court rose for lunch at 2 p. m. and met again at 3 p. m. Maulana Hussain Ahmed continued his address to jurors. He began to read and explain the authentic Traditions of the Prophet. He said:— It is provided in our scriptures that next to the sin of Kafir is the sin of killing a Muslim without any just cause.

There are some acts which a Muslim has to do if he is compelled by King to do under pain of being killed, such as drinking of liquor, eating pork, though they are Haram in religion. If he refuses to obey the King and is consequently killed by the King, he is a sinner. Secondly, there are such acts as breaking fast where a Muslim has option to obey or disobey King even under penalty of death. But if a King asked a Muslim to kill another Muslim or else he will be shot down, the Muslim is enjoined by Islamic scriptures to sacrifice his life, but not to kill his Muslim brother.

I shall now refer to books written by learned divines about 100 or 150 years ago. A question had been asked from a learned divine at Delhi about 100 years ago: "Is it proper to enter the service of the British Government?" His answer was, "It is forbidden to enter services where prohibited acts, e.g., distribution of wine, etc., are done. You can enter other kinds of services." For doing acts that are *Haram* Hell is necessarily the punishment, but for acts that are bad, God may extend his pardon.

The resolution moved at the Karachi Conference was a religious commandment which has to be preached to every Mahomedan. There is also a religious injunction to convey the Quranic commandments to other persons. We are ordered by Quran to go actually in the army and ask soldiers that it is *haram* for Muslims to serve there but we did not go there and it was our weakness. As a divine it was my duty to convey this message to Muslim soldiers and the Queen had proclaimed that none will be molested in observance of his religious obligations. Those who have molested us are really responsible for going against the royal order. If any Muslim divine asks us not to follow Quran we shall not follow him.

God tells us.—“Be not afraid of the people, but be afraid of Me. Follow all what is contained in the Quran and nothing else.” It is necessary for every Mahomedan to obey the King, but if his commands contravene the commands of the Quran, we should not listen or obey him. We are not guilty under any section of the I.P.C.

None has stated that I was present in the Subjects Committee. It has been shown that I signed the Fatwa signed by 500 Ulemas and that I was present at the Delhi Conference; it was my duty as a Muslim divine to sign the Fatwa and to be present at the meeting. From my birth until this day I, as a Mahomedan,—God willing, until my death, as a Mussalman I have preached this religious commandment and shall continue to do so. No section of the I.P.C. can be applied against us in the face of the Proclamations. Forty crores of Mahomedans obey the Quran. The Quran at seven places has held that it is Haram to kill a Mahomedan. No Muslim has to disobey a word of Quran. Lord Reading in regard to this prosecution says that Muslim religion is not interfered with. I am glad to note that the P. P. and Judge have said that the Quranic law will not be taken into consideration. I shall be more glad if Lord Reading, Mr. Montagu and Lloyd George and even the Prince of Wales who is now coming proclaim that Muslims will not be allowed to follow all the commandments of Quran; it will be better for us and Swaraj will be attained in 2 months instead of 4 months. I proclaim with a loud voice that it is Haram for Muslims to serve in British Army.

DR. SAIFUDDIN KITCHLEW'S ADDRESS TO THE JURY.

After Maulana Hussain Ahmed finished, Doctor Saifuddin Kitchlew accused No. 3 addressed the jury as follows:—

Gentlemen of the Jury,

Before I deal with the case itself I would like to place before you a few things for your consideration. It is not an ordinary case in which you have been called upon to give your verdict. In ordinary cases you do not see a Judge, or a Crown Counsel, the Jurors, and the accused being photographed, nor all proceedings generally published broadcast in forms of booklets. In this case the Judge, the Counsel, and the accused have already been photographed and I understand that soon after your discharge you will be requested to give sitting. That in itself shows that it is regarded as a historic trial which will go down to posterity who would look upon your photographs with eyes of shame or glory. I hope in giving

your verdict you will follow only the dictates of your conscience and would yield to no extraneous pressure that might be brought to bear upon you to sell your conscience. I believe you are aware that the newspapers of all shades and opinions in India and in England, in fact throughout the whole world, are supplied with notes of these proceedings, and the eyes of the world are set on the result of this trial. The Government at great expense have collected—or concocted—materials for the case, called in witnesses from all over the country, secured most expensive legal advice and are squandering a good deal of public money on the police and military show to enhance the importance and the spectacular effect of this farce. They are also sending out press-notes and communiques containing half-truths and mis-statements to the world to create an atmosphere wholly prejudicial to the interests of the accused.

I do not know if you have ever acted as jurors or assessors before this, but let me make my position clear to you. I would not have addressed you as I am doing at the present moment. As a non-co-operator I am allowed to make statement. And as the Court would not record my statement I am taking this opportunity of saying to you what I would have said to the Court had my statement been recorded by it.

I want you to bear in mind that this case touches on the basic principles of British Administration in this country. It affects the religion of seven crores of Mussalmans on the one hand and the entire policy of the British Government towards its subject races, particularly in matter of faith, on the other.

I hope, therefore, you will give the case your fullest consideration and acquit yourselves like men. But let me tell you at the same time that I hold myself absolutely indifferent as to the nature of your verdict.

Our case, as you know, is that we have, in obedience to the Commandments of the Holy Quran, the Traditions of the Prophet and the dictates of good conscience, preached the precepts of our religion. My friend, the Public Prosecutor wants you to ignore the religious side of the question. The learned Judge seems inclined to the same view. In my opinion the Public Prosecutor has absolutely failed in his duty. He does not seem to have proper conception of his duty. I therefore ask you not to be misled by him or the Judge. His duty, surely, is not to secure conviction but to secure justice. This is exactly what my learned friend has not done. Both the Judge and the Counsel are wrong to say that religion has nothing to do with this case as it does not come within the scope of

the Indian Penal Code. For their edification and enlightenment let me inform them through you, gentlemen, that there is such a thing as religion in the case, and the Indian Penal Code and all other codes, civil or criminal, in this country are fundamentally based on the principle of religion and religious toleration. It would be an insult to the genius of Lord Macaulay and other Law Commissioners to say that they kept religious element out of the Indian Penal Code.

The Penal Law of India as at present codified contains one chapter—chapter XV—solely devoted to offences relating to religion. The framers of the Code while introducing Chapter XV say :—

“The principle on which this chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of the society; it is this that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.” Further on they say:—“All these considerations apply with peculiar force to India. There is perhaps no country in which the Government has so much to apprehend from religious excitement among the people. The Christians are numerically a small minority of the population, and in possession of all the highest posts in the Government, in the tribunals and in the Army. Under their rule are placed millions of Mahomedans, of different sects, but all strongly attached to the fundamental articles of Mahomedan Creed and tens of millions of Hindus, strongly attached to doctrines and rites which Christians and Mahomedans join in reprobating. Such a state of things is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration. On these principles the British Government has hitherto acted with eminent judgment, and with no less eminent success; and on these principles we propose to frame this part of the Penal Code.” (Note J).

Add to this, gentlemen, the famous Proclamation of Queen Victoria which was made soon after the First War of Indian Independence commonly called the Sepoy Mutiny, because it failed to achieve its immediate object. Add also the solemn Declarations successively made by the British throne, the British ministers, the Viceroy and other high and responsible personages in a position to speak on behalf of England and the English nation. Thus it is abundantly clear that religion is a very important element to be considered by the Jury, and the Jury is bound to take

judicial notice of it. In fact this Court has, much to its chagrin, already realised the importance and the necessity of religious toleration. In the case of the Shankaracharya you have witnessed yourself how the Court was obliged to come down from the high pedestal of prestige and recognise that a Sanyasi can command respect even in a British Court of Law.

Before going into the facts of the case let me take you into my confidence for a while so that you may be able to understand and appreciate the position better. Now let me inform you, gentlemen, that I am a Hindu by race and a Mussalman by religion. I claim to inherit both Hindu and Muslim civilizations—the one through blood and heredity and the other by reasons of faith and adoption. I am proud of my race and religion. As a nationalist I love India with the intensity of love that only a patriotic heart can feel and I am ready to lay at the feet of the Motherland, to do all that is best in me to make her free, prosperous and happy.

As a Mussalman I am bound to obey the commandments of my religion. The defence of Khilafat, the holy places of Islam, and the Jazirat-ul-Arab, is a religious duty the neglect of which drives one outside the pale of Islam. I am, therefore, religiously bound to do all in my power to keep intact the integrity of Khilafat and the holy places of Islam.

My religion forbids me to co-operate with the enemies of Islam. British Government has proved treacherous and false to the cause of Islam. Her ministers have shown racial and religious prejudices towards Turkey and the Mussalmans, by preferring opportunism to honesty of purpose. On account of the shameful makeshifts of her ministers and statesmen, I regard British Government as enemy of my faith. I, therefore, consider it a sin to co-operate with her until she has made amends for her misdeeds.

As a non-co-operator I can be either violent or non-violent according to the laws of Shariat. I am entitled to use force when I have the power to do so, or stay where I am and practise non-violent non-co-operation. The use of physical force for me in the present circumstances is out of the question. Hijrat or migration is impracticable for seventy millions of Mussalmans. Non-violent non-co-operation, therefore, is the only thing that a Mussalman in this country can practise to satisfy the dictates of his conscience and the Commandments of God. I am, therefore, a non-violent non-co-operator just as the Prophet of Islam was during his life at Mecca.

I am a non-co-operator also because I believe that a Government which has deliberately brought about the moral, economic and political degradation of my country, and which has been guilty of the monstrous inhumanities of the Jallianwala Bagh has no right to claim my co-operation.

As a non-co-operator, I ask for no justice ; I expect none from this Government. I have, therefore :—

1. engaged no counsel,
2. asked no questions from witnesses,
3. produced no defence,
4. advanced no arguments excepting one solitary statement which I am allowed by the rule of non-co-operation.

For I believe that this so-called trial is a mere farce stage-managed by an unscrupulous Bureaucracy to throw dust into the eyes of the people outside India.

The prosecutions have been conceived *abinitio* in a spirit of commouflagé and injustice. The Viceroy, the Government of India, and the Government of Bombay, have by means of declarations, communiques and statements in the press zealously tried to poison the minds of the people both in India and in England by creating an atmosphere prejudicial to the interests of the accused persons.

Among other things a lying statement has been published in a notification in Sindh which has also been attached to the record of the case to the effect that the Jagat Guru Shankaracharya of the Shardha Peeth, an accused in the case, is only a pretender and not the right claimant of that title. This is surely a wanton insult offered not only to the person of His Holiness the Jagat Guru but to the whole Hindu community.

The proceedings in the Lower Court were carried on in most arbitrary manner without the least regard for law and procedure.

They can be divided into three parts. In the first part,—

1. The District Magistrate, who himself appeared as witness constantly attended the Court and not only influenced the committing Magis-

trate by his presence but on one occasion even interfered in the proceedings by ordering the Police officer to make Maulana Mahomed Ali forcibly sit down while the latter was addressing the Court on some acts of its high-handedness.

2. The accused were purposely kept in the dark as to the true nature of the case and all the evidence against them.

3. The Magistrate refused to take all the evidence and even passed an order stating that the evidence of some witnesses might be taken up at the Sessions, thus making the fact of the commitment a foregone conclusion.

4. The Public Prosecutor was allowed to put leading questions and even to cross-examine his own witnesses.

5. The Magistrate though bound to examine the accused, refused to do so particularly in the case of the Jagat Guru Shankaracharya.

6. Excepting Maulana Mahomed Ali, the statements of the other accused explaining the circumstances of the case were not recorded.

7. The charge was not read out and explained to the accused who did not understand English.

8. The Magistrate called on the Public Prosecutor to argue his case while he never asked the accused, in spite of his promise with Maulana Mahomed Ali.

9. The Magistrate had written the committing order at home long before the statements of the accused were recorded or arguments heard. It was read by him soon after the Public Prosecutor had finished his arguments. The charge was also written beforehand.

10. The complaint, the charge, and the order of commitment are ambiguous and misleading.

This much for the first part.

In the second part—

1. Full twenty-four hours after the committment order when the Magistrate had become *functus officio*—the case was recalled in the Lower Court,

2. The Magistrate had done this *suo moto* without being asked to do so either by the High Court or any of the parties concerned.

3. The charges were read out in Urdu but not explained to the accused who were asked to put in a list of defence witnesses.

4. These vitiating effects were brought to the notice of the Court to show the farcical nature of the proceedings, but were not recorded by it.

Thus ended the second part. The third part was begun inside the jail in the following manner:—

1. The Magistrate took further evidence on behalf of the prosecution without being asked to do so.

2. The accused were not asked if they would produce any evidence to meet the evidence thus produced by the prosecution.

3. The evidence was in no sense supplementary or incidental but of vital importance to the case. It was the same evidence which the Magistrate had at first by his order refused to take.

This brought to end the proceedings in the Lower Court.

I have stated these facts not with a view to defend myself or take advantage of these illegal and vitiating circumstances, but just to draw attention to the farcical nature of the whole case. As for myself, I am indifferent to the result of this case. In fact I invite imprisonment.

The story in the Sessions Court was a mere repetition of what took place in the Lower Court, though it was done here on a more elaborate scale. In this Court too the Jagat Guru Shankaracharya was insulted, the statements of the accused were not recorded, the chairs were removed and the accused were made to sit on the floor. The accused were even threatened to be prosecuted for contempt of the Court. The behaviour of the Court on the whole was that of a prosecutor and not of Judge. The Court even arrogated to itself the original jurisdiction which is denied to it by law. The Sessions Court can ordinarily amend or alter or add to the charge when such amendment, alteration or addition is trivial, does not prejudice the interests of the accused and is supported by the evidence on the file. But the Judge in the present case changed the whole nature of the charge by adding a new section to it and by inter-changing sections in the charge-sheet. Let me explain to you what I

really mean. The charge as framed by the Court stated that the so-called conspiracy started in 1921, but the Court of Sessions, as you know, changed 1921 into 1920. Thus full one year was added to the duration of the conspiracy on the mere presumption that the prosecution would produce a witness who would give evidence to that effect. This is simply preposterous. Such assumption of power by the Court is not only unwarranted but is absolutely illegal and vitiates the whole case.

The charge against me is that I spoke in support of a resolution of the Khilafat Conference held at Karachi in July 1921. I want you to bear in mind the wordings of the resolution. It runs thus:—

“ This meeting of the All-India Khilafat Conference offers its hearty congratulations to Ghazi Mustafa Kamal Pasha and the Government of Angora on their brilliant victories and their heroic efforts for the safety and preservation of the Islamic Empire, and prays that they may similarly succeed at an early date in expelling alien forces from every corner of Turkish territory.

“ This meeting further emphatically declares that it is strictly forbidden for every Muslim according to Islamic Shariat to serve, to enlist in the army, or to raise recruits, and it is the duty incumbent on every Muslim and particularly on the Ulema to bring the religious commandments on this subject home to every Mussalman in the British Indian Army.

“ This meeting further declares that if British Government, directly or indirectly, secretly or openly, takes any hostile action against the Government of Angora, the Mussalmans of India will be obliged to take to civil disobedience in concert with the Congress ; and further to make a declaration of Indian Independence and Republic at the next Congress at Ahmedabad.”

This is the resolution which is the crux of this trial. I assure you, gentlemen, that I support every word of it now as I supported every word of it even at the Conference. I want you to read it and read it carefully and then tell me what portion of it appears to you to be objectionable. A similar resolution was passed at Gokak where we had received a telegram from London that the British had been directly or indirectly helping the Greeks against Angora. My friend the Public Prosecutor wants you to realise the importance of this resolution and I make a present of it to him and through him the Government that he

has the misfortune to represent in this Court. Yes, gentlemen, I attach and I want you to attach a very great importance to this resolution for this is an expression of my religious opinion which I am commanded by Allah to convey to the Mussalmans in the Army, and if this expression of opinion makes me liable to be punished under any section of the Indian Penal Code, I am willing to undergo that punishment. This resolution, you will see, declares that it is unlawful for a Mussalman to serve in the British Army and calls upon the Ulema and others to convey the message to the soldiers generally. The Congress, the Khilafat Committee, the Jama'at-ul-Ulema, the Muslim League and other religious and political organisations in the country had passed similar resolutions long before the Karachi Conference. There is nothing new in this resolution. It is only an expression of the same principle in terms of Islam. It is not a statement, rumour or report calling upon the soldiers to disregard or fail in their duty as such nor is it an abetment of meeting or an attempt to seduce soldiers from their duty. Therefore sections 131 and 505 of the Indian Penal Code have no application whatsoever. The soldiers are required to know the commandments of their God, but they are in no sense called upon to neglect their duty. It declares as unlawful for them to serve in the army, when such service makes them do any act against the law of Shariat; it is therefore conditional. It merely tantamounts to a conscientious objection, the whole thing is conditional, which is to take place under given circumstances. The Muslim soldiers, if the circumstances do not permit their service in the army, are warned on religious grounds to secure their discharge from the army. The discharge can be secured by means of perfectly legal methods. It does not necessarily mean that in order to secure their discharge the soldiers must do illegal acts. They can acquaint their superior officers of their religious obligations, they can resign or apply to be struck off the rolls or buy their discharge and use many other ways in getting out of the army and that only when they are called upon to do an act against their religion. I want you to particularly note that in the same resolution the disobedience of law is not to be resorted to until the "All-India Khilafat Committee" resolves to that effect in consultation with the Indian National Congress. This is a very important point having a direct bearing on the whole case and I would therefore put it to you in another way:—

The charge against me is that I have asked the troops to swerve from their duty. Does this resolution say that I have directly or indirectly done anything of this sort? I tell the sepoy that it is "haram" for him to serve in the British Army. I admit that it implies that if a sepoy

according to his conscience believes in the commandments, he would resign. In pursuance of the Congress resolution we have said similar things to pleaders. We have never compelled any pleader nor have we resolved to compel any sepoy. The natural consequence of this resolution is not disobedience of law or breaking of allegiance or neglect of duty. The first step would be to secure discharge. We do not say 'do it by illegal means.' If I am liberated I shall tell the sepoys to secure discharge by legal means. This resolution speaks of civil disobedience in future. Up to now we have not resolved about putting civil disobedience into practice. May my countrymen have strength enough to adopt civil disobedience.

I am further charged with conspiracy to seduce soldiers—conspiracy requires agreement between two or more persons to do an illegal act. It also requires definite tangible proof of that agreement ; now I ask you as conscientious gentlemen, in the presence of God to say : is there any evidence on the file of an agreement between any two of us to do any illegal act—a mere presumption would not do. The Government ought to be ashamed of basing their claims on mere presumptions. I am prepared to admit that it is not necessary for all the conspirators to meet and arrive at an agreement to do an illegal act, but it is necessary for the prosecution to prove that any two at any one time, at any one place agreed to go to the soldiers calling upon them to break their allegiance or disregard or neglect their duty. The Public Prosecutor has tried to muddle your brain with several technicalities, but I want you to pay no heed to the technicalities of the case, for you are here to decide on broad open facts, whether there has been any overt act on the part of the accused which can bring them within the clutches of the law. The prosecution has made frantic efforts to prove an overt act. Certain leaflets have been brought on the file to prove an overt act. Officers in the army have come forward as witnesses to depose that attempts were made to seduce the soldiers. These leaflets will show to you the hypocrisy and the sheer absurdity of the whole case.

Now, gentlemen, you can see the legality for yourself and I want you also to carefully note the envelopes and the handwriting thereon. The envelopes containing the leaflets bear stamp-marks of different stations in the United Provinces for instance Miradabad, Kaushi, etc., but they are all of the same colour, the same quality, of the same texture and size and even the same handwriting—this much about the envelopes. Now as to the language of the leaflets you will see that it is absolutely incorrect.

Verses from the Holy Quran are not only wrongly quoted but also tampered with. The leaflets bear no names—no name either of the printer or publisher—they appear to have been printed at some “Shauq” press in Lahore—no evidence to prove this fact. They further seem to have been published by the “General Secretary of the Publishing House, Delhi”—no evidence is produced either from Lahore, Delhi or the United Provinces to prove the genuineness of the documents in question or even the existence of such wonderful institutions and persons as given in the leaflet, and by such shabby tricks and contemptible artifices the Bureaucracy in India wants to prove the charge against us of attempting to seduce Muslim soldiers from their duty. As to the conspiracy itself, as I have just explained to you, there is not a tittle of evidence on the file to shew that any two or more accused at any time in their life conspired or came to an agreement to do any illegal act. I want you also to remember that the language of the resolution or of the speeches made is not the subject of the charge, therefore an illegal act on the part of the accused outside the Conference pandal, must be proved before the charge under these sections can be established.

I am sorry, gentlemen, that none of you is a Mussalman, you are either Christian or Hindu. It is difficult for you to understand the nature of this case; for your convenience, I want you to compare the verses given in the leaflet with the original text given in the Holy Quran which I am placing before you. I am glad you see the difference between the two. Now this will clearly shew that none of the accused could have made such glaring mistakes nor such a responsible body as the Khilafat Committee could do such a thing as this. Probably, you know that for a Mussalman it is considered to be a great sin to alter, add or amend a simple alphabet, syllable or a jot of a Quranic verse. Besides, the Khilafat Committee would have published leaflets over the signatures of the Secretaries or some responsible members just as they passed the resolution openly. It is said that the resolution was passed at a “Subjects Committee” before it was finally adopted by the Conference, but the prosecution has not produced a single eye-witness to show the presence of all the accused at the “Subjects Committee.” Only one witness who deposes that he recognised Maulana Shaukat Ali’s voice at the ‘Subjects Committee.’ Now at the Subjects Committee it is not necessary that all members should attend or all members should vote. It need not be a unanimous resolution of the members present, therefore it is no evidence to say that the mere presence of one on the Subjects Committee is enough to prove his connection with the conspiracy. I would like to call your attention

to the "Fatwa" of the Ulema. Probably you know that the 'Jamiat-ul-Ulama' is a distinct body, with a separate organisation of its own and it has nothing to do with the 'Khilafat Committee' as such. The Fatwa is signed by 500 Ulema and is published with the authority of the Secretary of Jamiat-ul-Ulama. This has been put in simply to poison the mind of the Judge and the Jury, otherwise it has no bearing on the case and is not a subject of the charge. The law is very clear on all the points to which I have drawn your attention, but I do not want to argue by quoting authorities or citing cases. I am just attempting to show that the case, one-sided as it is—is a mere farce and a travesty of justice and that no Indian can expect fair play in Courts established under a system of Government, which is not only irresponsible and wicked but is totally opposed to the moral, material and political interests of the country. The motive of the Government is to cause harm to the Khilafat, Swaraj and the Hindu-Muslim unity and the present case is a direct attempt on the part of the Bureaucracy to give a stunning blow to the rising aspirations of the country.

Gentlemen, I do not wish to say anything about Islamic law on the question. My friends Maulana Mahomed Ali, Maulana Hussain Ahmed Saheb have both dealt with this at length and if you care to study their statements you will come to know the true nature of the religious aspect of the question. Maulana Mahomed Ali is a learned man. Maulana Hussain Ahmad is well versed in Islamic law. Shri Shankaracharya is being adored by crores of Hindus. Pir Mujaddid has lakhs of followers. Maulana Nisar Ahmad Saheb claims a large following in the United Provinces and Maulana Shaukat Ali, you can see for yourself what he is, he is a host in himself. And for myself, well, I am an old jail bird and "great friend" of Sir Michael O'Dwyer the ex-satrap of the Punjab who is still crying himself hoarse about me in the distant land of England.

I was deported in 1919 from my house at Amritsar to the Dharamsala hills by the "Strong man of the Punjab." On my deportation some of my countrymen were shot down in cold blood by the long arms of the Bureaucracy for having dared to claim my restoration. Some of my countrymen under circumstances of grave provocation thus caused, lost their self-control and in turn killed a few Englishmen and burnt a few buildings in Amritsar. For this act, a very wrong act indeed—they were condemned by their own citizens at the Jallianwalla Bagh on the famous 13th of April 1919. Just as the people of Amritsar assembled in their

thousands and were in the act of condemning the provocation caused by the bureaucrats on the one hand and the senseless deeds of their own countrymen on the other, they were fired upon by the orders of General Dyer, the renowned warrior of Bureaucracy, and left dead and wounded without medical aid to meet their glorious death as martyrs in the cause of their country.

Out of the fullness of heart and love which the people of Amritsar bore me for the humble services I had rendered in the cause of Satyagraha, they had in my absence elected me President of that memorable meeting of the 13th at Jallianwallabagh and had put my photograph in the Chair. This was one of the gravest offences I had been guilty of in the eyes of the Punjab Bureaucracy. I have a long list of offences against me. I give you just a few for I cannot remember all.

I was among the first in the Punjab to take the vow of Satyagraha. I had also formed a Satyagraha Association in Amritsar and organized agitation throughout the Punjab against the Rowlat legislation—I had done all in my power to expose the mis-rule of the Punjab Government, particularly its boastful Governor of Martial law fame—I had also invited the Congress to hold its session at Amritsar to hear the stories of atrocious mis-rule of the old O'Dwyerism regime. Thus you see, gentlemen, I was rightly regarded a dangerous man by the Government of the Punjab, therefore after the cold blooded murder of the Jallianwallabagh they could not find a better man to be placed at the head of a conspiracy which was alleged to have been started at Amritsar with the distinct object to overthrow the British rule in India. This was a most convenient thing concocted by the fertile brain of Sir Michael and his colleagues to hide the sins of their own acts of commission and omission. That was a movement, gentlemen, inaugurated by the Bureaucrats of India, particularly the Punjab, to thwart the object of the reform scheme. This time it is a conspiracy on the part of the Government of India with the Bombay Government as its tool to defeat the object of the Khilafat, Swaraj and Hindu-Mahomedan unity. Therefore I request you to be careful for the sake of your own salvation before you give your verdict in this case. Your judgment against me will be against my religion, my country, for, the purpose of this agitation for which I am hauled up in Court, is that I as an Indian, claim to live my own life with absolute freedom of thought, of speech, of action and of conscience. I am absolutely indifferent as to your verdict and I request the Judge to give me the full

penalty of the law by transporting me for life and not to condemn me to a lesser term of imprisonment.

I am an agitator—I frankly admit. I am also a revolutionary—for the movement of non-violent non-co-operation is nothing if not a revolutionary movement. In the method of agitation I follow my renowned leader Mahatma Gandhi who is at once a saint, a seer and a practical man. I am also the founder of the Swaraj Ashram at Amritsar and the Government is very anxious to know the absorbing mystery of its inner working. I have dedicated my life at the Ashram and have taken a vow not to do anything for personal gain till the repetition of the Punjab wrong is made impossible, Khilafat wrongs are righted, and India gains Swaraj—its complete liberty of thought, action and conscience.

I have no hatred of foreign race, religion or country, but I yield to none in my love and loyalty to my God and my country.

I thank you, gentlemen, for giving me an opportunity of explaining myself fully and also thank you for giving me a patient hearing. I also thank the Judge and the Crown Counsel.

I have no ill-will against you or against any one personally. In the end, I appeal to all to remain non-violent till the end and follow Mahatma Gandhi till we have gained what we are fighting for.

The Court then rose and the leaders departed in the prison van amid loud acclamations of "Bande Mataram" and "Allah-o-Akbar."

SIXTH DAY'S PROCEEDINGS.

SATURDAY, 29TH OCTOBER 1921.

PIR GHULAM MUJADDID'S ADDRESS TO THE JURY.

Pir Ghulam Mujaidd being called upon to address the jury spoke in Sindhi said:—

Before I come to the case proper, I want to say that I have regard for the physical power and L. P. Codes of Government only so long as they do not demand from me anything contrary to our religious Laws of Quran and Shariat.

If the ruling power demanded anything from us which is contrary to our religious commandments, then it will be the duty of not myself alone, but crores of Muslims to destroy that authority. We have been prosecuted here on a charge of a "Conspiracy to seduce soldiers" but we never discussed the matter at any time. I am a Muslim Alim and a Pir. I have necessarily to act according to the commandments of Quran. I have not yet obeyed the order fully. I have only translated the resolution in Sindhi. The Fatwa was drafted by Ulema and contained Quranic orders and I was bound to sign and obey it. It is God's law. God says:—Those who know God's law should propagate it, widely or else God's curse will fall on them. Another Ayat says:—The Alims are duty-bound to convey the doctrine of God to all. It is incumbent on all Muslims to propagate the law of Islam to all. Another Ayat says:—You will be considered good only when you communicate My order to all people in general. Now should we obey it? Or should we obey the Government? If it is a crime to obey what is commanded in the Holy Quran, then all the Ulema who daily teach and explain Quran to thousands of pupils are also to be, one day, prosecuted like us by the law courts.

One of my ancestors had been prosecuted only because he did not bow before a King though he was a Muslim. But I consider it fortunate for me if I am even hanged for refusing to obey the orders of a Non-Muslim Government when those orders conflict with Islam.

Hazrat Ali Abubakar Siddique, one of the greatest Khalifas, said:—I am also one of you and I am your King, only I should be obeyed so long as I do not go against the law of Islam.

The same thing was declared by Hazrat Amir Umar when he became a Khalifa.

Now God commands us to propagate His Divine doctrine to all, but this Government is prosecuting us for that. An Ayat says:—The Ulema and Pirs who would not propagate God's orders to others will be awarded eternal Hell. But I cannot understand the aim of this Government. Is it that they forbid us to say what our Quran says?

Allah in Quran orders:—Don't kill a believer. Now God says so but the Government says that we should go and fight against our own brother Muslims. And if we forbid our fellow brothers from going against God's orders, we are hanged. But Muslims don't care if they are even killed and hanged for the sake of Islam, because for a Muslim it is a privilege to be sacrificed for religion.

Maulana Hussain Ahmed recited many Ayats and Hadiths about the punishment to be meted out to those who kill a Muslim. But I don't want to repeat those Ayats again. I want merely to say that God has ordered us 7 times in the Holy Quran not to *help* even any one in murdering a Mussalman. If any Muslim even points out with a sword to a Muslim with an idea of killing, he is to be eternally cursed. There are two kinds of orders for us in the Quran (1) *Amur* and *Nahi*. *Nahi* deals with those things which we are forbidden to do and *Amur* deals with those things which we are ordered to do.

Allah orders us:—Do not kill a Muslim. If you kill, you will be disobedient to Me. Now should we not obey the commands of God and Quran and should we not communicate the law of God to all?

In Quran Allah says:—It is 'haram' for a Muslim to kill a brother Muslim. Now if God says that a certain thing is not lawful and if we find our brothers doing it, should we not forbid our brothers to do that thing and thus save him from the punishment of God?

Muslims, without caring for caste, colour or creed, whether they are of West, East, North or South, whether they belong to India, Arabia, Morocco, or Turkey, are limbs of one body if they all recite the one holy *Kalma*, i.e., "There is no God but one God and Mahomed is His Prophet." If I see a troop of my Muslim brothers going to Angora or Turkey to kill their own Muslim fellow brothers, should I not inform them of God's commands in order to save them from torments? In spite of these clear

injunctions we have only translated the resolution. Those who read the Quran daily, read this resolution every day, and they ought to understand the meaning of Quran well if their *prayers* are to be accepted.

According to an Ayat, there are 5 punishments for a Muslim who kills another Muslim. (1) Hell, (2) eternally living in Hell, (3) God's curses, (4) God's ¹ i.e. damnation and (5) Chastisement.

God says :—He who kills one person has as if killed whole world and will be punished as such. But if we forbid our brother to do that sin, we are prosecuted !

Our Prophet in his last days said : I order you that this Bait-u-Allah and 10th night of Moharum are sacred to us but more than anything else is the blood of a Muslim holy to us.

I was glad to hear that an Alim in Islamic law was coming here and I would have asked from him what the aim of Government was in this prosecution.

There are 6 books which are authoritative for Muslims, only after Quran. They are called Suhasit Sharif. In them God has allowed killing of a Muslim only in three cases :—(1) murder, (2) adultery and (3) apostasy. Now if we obey this Government, according to Prophet and God we shall be Kafirs and be worthy to be hanged or killed. One of the Ayats says :—He who only utters one word about killing or only points out to a Muslim with a sword with an intention of killing, shall be cursed by God and he is not a Muslim.

Hazrat Abdul has told us that even Kaaba is not so sacred as a drop of Muslim blood. It is haram to kill even a bird in Bait-u-Allah Shari but even more sacred than that Bait-u-Allah itself is the blood of a Muslim and yet Muslim blood is being shed there. Hell has 7 doors and one of them is especially for those who draw sword against any other Muslim.

A Hadith says :—If any one only draws sword or a dagger against a Muslim, God and all Angels will curse him until he drops it. There are thousands of such Hadiths but being confined in jail we have been able to recollect only 80 or 90 Hadiths. The Holy Quran although a little volume contains all that a Muslim has to do and it is replete with such orders.

Now I come to Fiqa books. Shah Abdul Aziz gave his Fatwa 100 years ago saying that fighting against Muslims is unlawful; but that Fatwa was not proscribed. Why? Because perhaps the Queen Victoria's proclamation was fresh yet or because the Government did not at that time want to destroy Islam from the world!

The Court :—The Proclamation was issued only 64 years ago and the Fatwa referred by you was 100 years ago.

Pir.—Yes, but it has been republished again and again. The edition which we have got (showing) was printed only 26 years ago. Moreover, another Fatwa of Moulvi Abdul Ali is only 50 years old. Why is it not proscribed? And why is the Fatwa of Jamat-ul-Ulema, signed by 500 Ulemas of India proscribed? Either the Government wants to destroy Islam or it is wholly ignorant of it or they want us to be converted to Christianity. It is a Muslim's bounden duty to sacrifice all and suffer for Islam. God has said in the Holy Quran :—If you are in jail for Islam, you are fortunate but do not say aught that is against Islam. I therefore am fortunate that like my great-grand-father Hazrat Pir Mujadid I also have to suffer.

The Judge wanted to hear the whole story about the Pir's grandfather whereupon the Pir said :—

Our grandfather lived in the State of Patiala. Our family is in Afghanistan. My personal *murids* are about 10 thousands. Our great-grandfather was one day called by King Jehangir who ordered him to pass from a very low door with an idea of making him bow. But the Pir Sahib refused to bow his head before the King saying that he had bowed his head only to God and would bow before none else.

The King's men told the King that the Pir was measuring strength with the King and the King ordered him to be put in Jail even as in this Court the Judge ordered our chairs to be removed (laughter). He was put in Gwalior Jail but that Jail was not like Karachi Jail but only an internment. But after a time the King saw his folly and went and begged pardon from him and even so I am sure this Government also will repent and take pardon from us all (laughter in the Court).

Now we want to know from this Government if we should follow Quran and be true Muslims or be their subjects?

If a King orders a Muslim to eat a dead body or pork and drink wine or else he would be killed, it is his duty to do all those forbidden things because if he is killed, he will die as a sinner. If he is asked to utter some unholy words on pain of death, he would do so but keep his heart pure. If he is ordered to rob the property of another Muslim or else he would be killed, he may or may not rob it. But if any Muslim is ordered to even cut a hand of a Muslim, he should refuse to do so and should prefer to be killed himself. Now my so many brothers go and kill so many of their Muslim brothers and our Government even forbids us to tell them what our religion demands. I think the Judge knows something of Arabic and he knows that Fiqah is next to Quran and Hadiths of God. If I quote all the Verses in this connection, I will take days, but I only want to declare clearly that in proscribing the Fatwa, the Government has the intention of destroying Islam. But God has ordained:—Do not bow before Zulum and tyranny; and here is a direct attack on Khilafat and Islam.

I am prosecuted because I supported an Ayat of Holy Quran but my friend the P. P. did not prosecute me when in 1920 I was translating all Ayats in Tatta. He can even now do so. In the beginning there was an attack on Khilafat but now there is an attack directly on Islam.

The 22 crores of Hindus should well understand that one day such attacks on their religion are also expected if there is such a tyrant Government. Are these attacks now coming because there is Hindu-Muslim unity? But whatever it be, we Muslims are ready to be killed—hanged for Islam. Our family—our children, our all is ready to be sacrificed for the sacred cause of Islam.

MAULANA NISAR AHMED'S ADDRESS TO THE JURY.

After him Maulvi Nisar Ahmed was asked to address the jury. He spoke in Urdu.

He said :—Before everything else, I am a Muslim and obedient to the orders of God and his Apostle.

I would not submit to any wrong even if any great man ordered me to do it. This Government claims that there is justice, there is law and there is full religious freedom to all. As for justice and law, I think there is no justice. I have seen in this Court how justice has been killed.

Maulana Mahomed Ali and others showed how law has been mutilated. Immediately after I went from the Khilafat Conference, Karachi, and reached at Cawnpore on 13th July, I was arrested on 14th July and brought before the Magistrate of Muttra.

The speech for which I was hauled up before the Court could not be found for 8 days and I was in jail ! On the 9th day a paper with something written in pencil was produced as being notes of my address. Perhaps they were prepared later on. They were so illegible that no one could read them—not even the writer.

A C. I. D. Inspector was produced as witness who said that he had read it and signed it. But when he could not read it, the P. P. cleverly tutored another witness to say on the next day that he heard me speaking and therefore signed the notes of my speech ! I was put in jail and am still a prisoner. The Magistrate came to me in jail and enquired from me about my welfare. He also asked me if I wanted to go to Mecca and Medina and told me that Government was ready to send me there. I asked him :—Have you done justice ? He replied :—Oh, don't you see I filled so many pages ? I asked : is justice in writing more papers ? He went away laughing.

In this case, the witnesses have been calling themselves Sayeds and Shahs, Khan Bahadurs, etc. Can real Sayeds go against Khilafat ?

Can these men be true to Government if they are untrue to their own religion, Islam ? But if they are going to speak truth, they would be driven away from the service and they fear.

My friends have pointed out many irregular points of law in this Court and in lower one. But it is not the fault of this Judge only, it is common in all the British Courts. Even so was it in Muttra. But then why is the Government boasting of Justice ?

Why were so many witnesses called ? Not for giving Justice but only for making a show of it. Our Viceroy boldly says that there is no attack on Islam ; does religion consist in building Musijds and observing outward ceremonies only ? No, our religion consists in following Quran—every word of it.

This resolution which we passed in this Conference was passed 1,300 years ago and was proposed by the Prophet himself. If it is crime to say what is written in Quran, then by all means prosecute us. But then I am at a loss to understand what is meant by religious freedom.

An Ayat of Quran Sharif says :—If we only think of killing a Muslim, we will be worthy of being put in eternal Hell. Those are Kafirs who go against Muslims. If any Muslim even points out to another Muslim with his hand or finger with an intention of killing, his prayers or pilgrimage to Mecca are not accepted at all. Yet another Ayat says if any Muslim takes arms against another Muslim all angels will curse him till he keeps back those arms. Curse of Angels does not mean any simple thing. It means that God would never forgive the sins of that man.

I supported this resolution according to my religious duties. But I was not a member of even Subjects Committee, yet I am charged of conspiracy ! There was no discussion between us because there is no necessity of discussion on a religious commandment.

If the Government wants to destroy us and our Islam, why is this all show, why not bring soldiers and guns and shoot us all ? We are very weak persons.

What is this Jury for ? It is not for justice at all but mere for show. In Dharwar case and many other cases the Judges have gone against Jury. They do what they have already decided to do.

But every person has to die one day and why not to die for one's religion ? So gentlemen see that you do not do anything on account of which you may have to suffer heavily in future. You may not be subjected to God's curses. If Mahomedans are even killed for Islam they are fortunate.

I had supported the resolution in Conference and I still support it and declare that it is *Haram* for Muslim soldiers to continue in the British Army and thus fight against their Muslim brothers.

Crowds Witnessing the Trial.

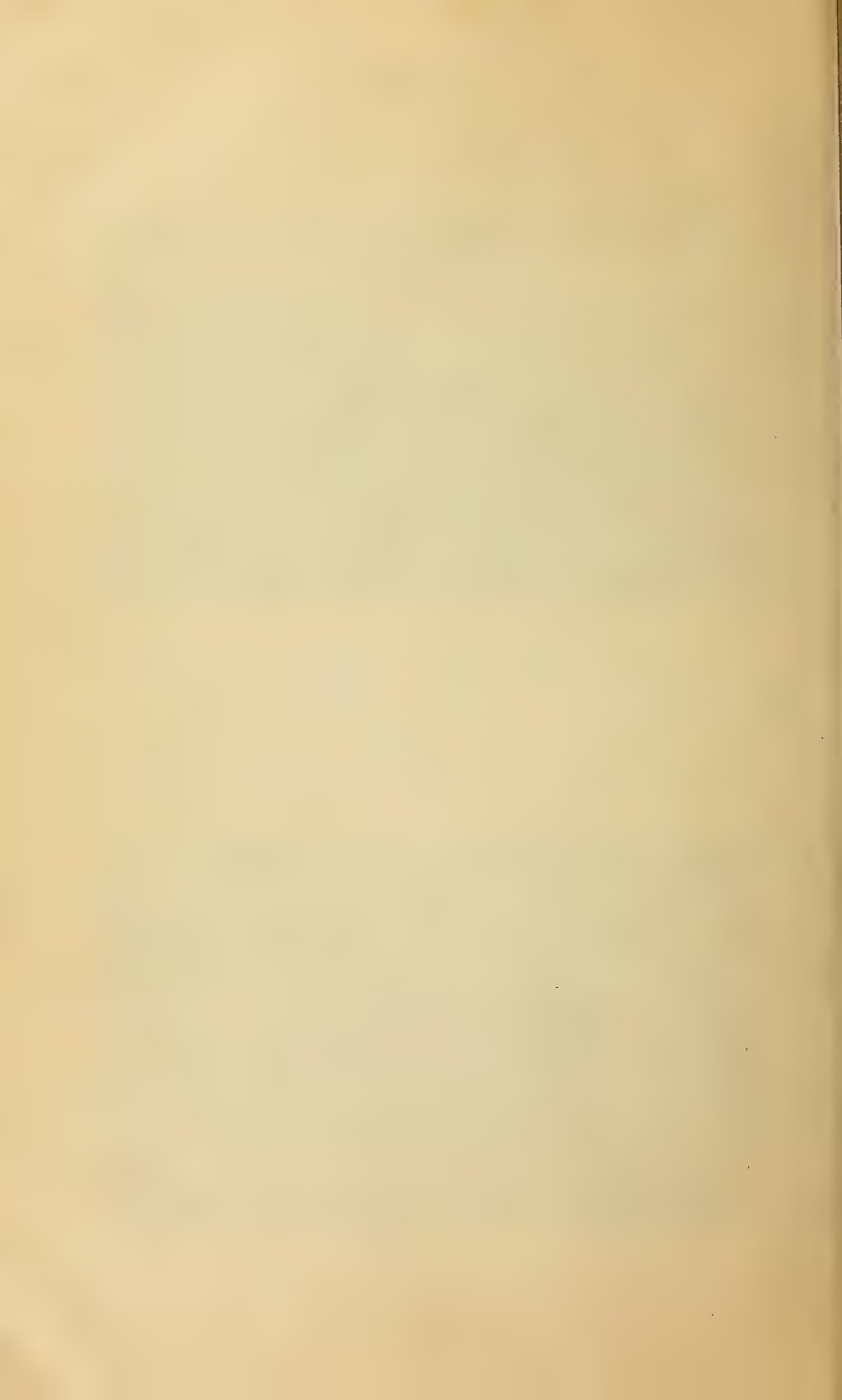
Opposite the Khalikdina Hall.



View Towards the East.



View Towards the West.



SHRI SHANKARACHARYA'S ADDRESS TO THE JURY.

After Maulvi Nisar Ahmed, Jagad Guru Shri Shankaracharya addressed the Jury. He was permitted to read his written address sitting in a chair. He said :—

1. THE FACTS.

We are in Holy Orders and recognise only one Law—the Law of Dharma (Truth, Justice and Duty)—the Law of Life—embracing, sustaining and unifying, (or at least, co-ordinating and harmonising) all the activities of life. Owing to manifold and multifarious reasons connected with our temperamental predilections, our rules of Sanyas and the methods and the character of the existing Courts of Law in the country, we cannot offer any sort of defence in the usual manner, but, in view of the momentous principles involved in this case, we are unavoidably though reluctantly—compelled to make a lengthy statement of all the facts relating to our case, so as to elucidate and clarify all the points at issue.

It was late in the afternoon of Friday the 16th September 1921 that the D. S. P. of Kaira (Gujrat), attended by a huge array of (wholly unnecessary) armed men, approached us at our (old) Head Quarters in Dakor (Gujrat) to inform us that a certain official of the C. I. D. Police Head Quarters at Poona had a warrant from the District Magistrate of Karachi for our immediate arrest on a charge, amongst others, of conspiring with Maulana Mahomed Ali of Rampur to seduce soldiers from their allegiance and their duty to the Queen ! As we had never yet had occasion to speak to soldiers or even *about* them at any place (including Karachi), the charge was naturally incomprehensible to us except on the one supposition that a speech of an actionable character under Sections 131, 505, 120B, 105 and 114 had been fabricated and ascribed to us by some obviously inventive Police brain at Karachi ! As, however, this was not a matter to be discussed with or even explained to Policemen with an arrest warrant, we said nought about it to them. But the purely religious fact was merely pointed out to them that we were just then nearing the very end of our Chaturmasya Vrata and that, Poornima having come in already, we needed but a few hours more for completing our Vishwarupa Yatra ceremony. The D. S. P.—who talked in a courteous, gentlemanly and even deferential manner—expressed his appreciation of the situation and his regret that, as he had received peremptory instruc-

tions, he was absolutely powerless and helpless in the matter. And so, (even though there was no search warrant), all our correspondence and other papers—personal as well as of the Gadi—and extending over a period of nearly 15 years—having all been rummaged, bundled up pell-mell (on account of the hurry) into a long wooden box of ours and sealed (without even an inventory of the papers being made), we were brought away from Dakore Railway Station to Drigh Road which we reached on the evening of the 18th September and whence we were duly brought over to the Karachi Central Jail.

In passing we may just mention that we were informed (by our so-called "Captors") at Dakore that we were being taken far out of the Bombay Presidency into Northern India and so on. Why, in the face of the Karachi District Magistrate's plain warrant and our actual catching of a train bound not for Delhi, but for Ahmedabad *en route* to Karachi, this wholly purposeless and incredible lie was told to us and repeated all through, we cannot understand except on Mr. Mahomed Ali's interesting, fascinating and felicitously worded theory about the "Sacred traditions of Crown prosecutions in this country" wherein, lies are loved not for utilitarian purposes but *for their own sake* !

To resume the thread of our narrative. After our arrival here, we learnt, from the Anglo-Indian Newspapers (the only ones which, until our commitment to the Sessions, the partisan bureaucracy allowed us in the jail), that the charge against us was *apropos* of our support of a Resolution of the All-India Khilafat Conference in July last at Karachi. Not knowing even a single syllable of Urdu, Sindhi and Persian wherein (barring our own two speeches and a few words of Mrs. Sarojini Naidu's) the entire proceedings of that Conference had been conducted, we had not even heard that there was any Resolution of that Conference relating to Soldiers in the Army ; and so, these newspapers did not make the position any the less mysterious or more comprehensible to us than before.

It therefore behoves us to state, at this juncture, what exactly we *did* say and do at the Conference. First there was, on the opening day, a preliminary speech of a benedictory character wherein we explained that Lord Shri Krishna's teaching of Swa-Dharma (One's own duty) was not merely for Arjun or the Pandavas or even the Hindus, but for all Sentient Creation as such ; that Manu and other Spiritual Law-Givers of the Hindus had expressly defined Swa-Dharma as that which existed

not in hostility to—but alongside of and in sympathetic and cordial amity with Para-Dharmas (others' duties) ; that the Khilafat was not a temporal but a spiritual affair entrusted by the Holy Founder of Islam into the hands of True Muslims ; that any individual who deliberately refused to obey the Prophet Mahomed might very plausibly justify himself as a freethinker, a rationalist, a scientific agnostic and so forth but could not, under such circumstances, call himself a Mahomedan and if born a Mahomedan, could only be regarded as a renegade and an apostate from Mahomed's religion ; and that we Hindus who believed in the broad-minded and universal conception of " Swa-Dharma " enjoined on us by the Lord Shri Krishna, Manu, etc., and endorsed by England too in Nelson's famous device "England expects everyman to do his Duty" we had morally no option but to sympathise with and help our Muslim brethren in their almost superhuman endeavours on behalf of their beloved Khilafat against odds tremendous and handicaps innumerable.

Owing to the difficulty caused by the great distance at which, a few miles away out of Karachi City, our quarters had been arranged for us for the sake of the conveniences and detachment preferred by us for our accommodation, worship and meditation in our orthodox Hindu style, it was about 11 a.m. the next day when we were taken to the meeting of the Subjects Committee just as it was about to close and thence to the open session of the Conference, wherein Mrs. Sarojini Naidu of Hyderabad (Deccan) began her Urdu speech with a short English preface, expressed her sympathy as a Hindu with the endeavours of Islam towards the safe-guarding of the sacred shrines of Islam as enjoined by the Prophet Mahomed and appealed to us, in our Pontifical capacity of Jagadguru Shankaracharya of the Shri Shardapeeth, to explain the Hindu ecclesiastical position as regards the sacredness of Mecca and other holy places of Islam. And, accordingly, Dr. Saifuddin Kitchlew and others desired of us and we promised them another speech on the subject in the night sitting and we returned to our quarters immediately (that is, about 2 p.m.) for attending to some other pressing engagement we had there.

Owing to the afore-described handicap of distance that separated our quarters from the Conference Pandal, it was nearly 11 p.m. when we arrived there again, to find that the proceedings had commenced already and had gone on for some time and that Dr. Kitchlew was on his feet. On his resuming his seat near us, he reminded us of our promised speech and, while another speaker was addressing the Conference, Dr. Kitchlew

had the usual arrangement made for a chair on the platform for us to speak seated from, as required by the rules of our Order. And then Dr. Kitchlew desired us to speak on Hindu-Muslim Unity and the Khilafat and to conclude with a few words on the Angora Government.

Responding to Mrs. Sarojini Naidu's appeal to us of the afternoon, we repeated our earlier general pronouncement that, as a believer in the Doctrine of Swa-Dharma for all, every Hindu should necessarily sympathise with the Khilafat cause, and we then added that, according to the detailed account of the Final Deluge contained in the Bhavishya Puran and other Sacred Scriptures of Hinduism, the Lord would take a Colossal form, stand aloft with His feet on Benares and Mecca (the only two places which would survive the Deluge), gather together there all the Faithful of all faiths, times and climes and garner them up thence to His own bosom, thus showing that, for a Sanatani Hindu who believed in the Puranas, Mecca was—not merely for general reasons of broad-minded religious sympathy as expressed by Mrs. Sarojini Naidu, but, in the light of this positive and categorical statement on the subject,—a Sacred place like Benares ! And, on the same authority, we mentioned, too, that Adi Shri 1108 Shankaracharya (from whom we the present Jagadgurus derive our Spiritual descent and authority and on whose Pontifical throne we sit) undertook a pilgrimage to Mecca in the face of enormous difficulties caused by the ignorant and self-sufficient bigotry of the fanatics of His day, and that He had therefore to use His Supernatural Powers, assume the shape of a parrot, fly to Mecca (which, be it noted, was yet to become the birth-place of Mahomed, the last of the Prophets, but had already been singled out for the purpose) and performed Puja (worship) there with the Sacred Tulsi and the Holy Water of the Ganges from Benares !

We thus explained that Hindu-Muslim Unity was really to be based on a Spiritual foundation. We instanced the infinite and kaleidoscopic permutations and combinations amongst the Powers of Europe based on no ethical principles whatsoever but merely paying homage to their fetish (" Balance of Power "). And we also cited the example of the late Balkan War wherein Servia, Montenegro, Bulgaria and Greece formed an unholy political combination, not because they positively loved one another, but solely because of their negative bond of common hatred towards Turkey, and wherein, after they had conquered Adrianople and while Bulgaria and Greece were fighting with each other over the booty,

the Turks walked quietly back into Adrianople, practically without having to fire a shot therefor ; and we condemned all such political combinations traceable to negative causes and insisted that Hindu-Muslim Unity should stand and could last, not on the negative political basis of hatred towards Britain, but on the positive Spiritual foundation of abiding mutual *Love* without any sort of reference whatsoever to Britain (or any other third party) to account therefor.

Having thus explained the Hindu Spiritual principle underlying the Ecclesiastical support which we were giving to the Khilafat, we alluded concisely to the trials and tribulations endured by the Angora Government as the only *Temporal* power having both the will and the power to save the Khilafat and as the " real Government of Turkey" as against the " self-styled Turkish Government at Constantinople" (a fact which, we see, even the Greek Prime Minister Gounaris has, during the last few days, openly acknowledged). And we therefore bespoke for Angora the sympathy and support of all godly, nay of all humane, persons (without distinction of race or creed).

In answer to the recently put forward and edifying pseudo-ethical objections of Mr. Lloyd George and other such quick-change-artists on the score of the Khilafat dating back from the Mediaval ages only and not from times immemorial, we pointed out that even the most ancient of landed proprietorships in England to-day dated back to the conquest of England by Robert the Devil's offspring William the Conqueror in 1066 A.D. and the distribution of most of the conquered land by him amongst his camp-followers, or, at the most to the depredations and ravages committed in England by brigands and pirates, Hengist and Horsa and Co., and that Mr. Lloyd George would—logically and morally—be called upon to get Englishmen to completely evacuate not merely India but even England and retire to Jutland, Denmark, Saxony, etc., before he could expect the Khilafat to cognise and follow his opportunist and specious doctrine of Ancient Historic Origins ! Parenthetically, we would state that Rollo or Rolf or Robert the founder of the Duchy of Normandy rejected the surnames " the good," " the great," " the magnificent," etc., and called himself " Rolf the Devil." Hence William the Conqueror was literally the off-spring of Robert the Devil.

And we concluded with a still briefer reference to Swaraj which, we said, should not be Hindu, Muslim or any other Raj but simply a Dharmic Raj conducted according to the basic principles of Justice and Righteous

ness which alone were the *sine-qua-non* and the guarantees of stability and unimpaired progress. Such a Swaraj alone was worth striving for and, like the Devas of Old who were not elated by the gems or frightened by the poison which they obtained in the course of their churning of the ocean for the sake of the Celestial Amrit (Ambrosia), we too should push on, unelated by concessions and undeterred by repression until we had churned out of the agitated ocean of Indian Politics, the Amrita of genuine Swaraj !

In connection with Swaraj we mentioned that the Nagpur Congress of 1920 had declared for Swaraj but had deliberately omitted to state whether the Swaraj it aspired to, was to be inside or outside the British Empire, because we had felt that, if we could continue as self-respecting individuals within it we would not go out of it for the mere pleasure thereof or owing to hatred of Britain, but, if Britain was foolish enough to insist on so behaving as to make our connection with her absolutely incompatible with our self-respect as Indians and even as human beings, then the Government would, by its own suicidal follies, compel the Congress to prefer "absolute independence" out of sheer and irresistible necessity ! We may state that in the memorandum on the Indian Status in the Dominions prepared by Lord Chelmsford's Government and recently published by Lord Reading's ; Lord Chelmsford too says "India sincerely wishes to remain within the Empire but only as an equal partner. Her own self-respect requires that she shall not accept any terms of inferiority."

Throughout these discourses, we followed our invariable practice of pleading for the rigorously unbiassed and dispassionate consideration of all questions solely from the view-point of Dharma and we never uttered a single syllable for, against or about the Army or the Navy. And thus it was that the charges against us were absolutely incomprehensible to us. We, therefore, naturally wondered by what mysterious process of reasoning, logical or psychological, our speeches at Karachi had got so inextricably intertwined with the Army and the Navy as to bring about our prosecution on a charge of attempting and conspiring to incite soldiers to Mutiny or to fail in their "allegiance" or "duty."

Once, indeed, in mid-May last at Ajmer, we came very near a serious affair of this sort wherein, owing to the ill-advised attempt of the Magistracy and the Police to arrest the Officiating Priest of the local Mosque and a disciple of his, *at the Mosque and during the Ramzan* and wherein

tens of thousands of armed, infuriated men surrounded the Mosque to prevent it. And we talked matters over with Mr. Gauri Shankar Bhargv of Ajmer (at that time a Government-gagged person), Dr. Mahomed Ali Shah of Aligarh and other friends, at the earnest solicitation of the police ; and we had the people pacified by them and thus helped, in our own humble way, to avert the threatened calamity which, we understood, was about to result in a tremendous collision between the Ajmer people and the Nazirabad Military forces ! Surely this successful attempt at the pacification of an excited people could not account for the present prosecution against us !

II. THE PRINCIPLES.

The only thing which, as a matter of fact, we have ever done and shall ever do in all our public lectures and our private discourses has been to impress, on our hearers, the clamant and paramount necessity for the *complete* spiritualisation of the *daily* life in *all* its activities. If it be a crime to say (as Nelson did) that every man should do his Dharma (Duty) we must certainly plead absolutely guilty to that charge and pride ourselves too thereupon ! In fact, this is our only function as Jagadguru Shankaracharya, not merely to *expect* people (as England, according to Nelson, does) to do their duty, but also to *incite* them thereto ! All people, even the most worldly, have this elementary human right of preaching Truth and Duty as the predominant factors in all life ; but a Sanyasi who has renounced the world, who owes no allegiance to anything worldly, who is bound only by and to Dharma, who has to practise it during all the waking hours of his life and who, particularly as a Jagadguru, has no other function than the preaching of Dharma to all according to their Adhikara—such an individual has not merely the right, privilege or prerogative but the *binding duty and unshirkable responsibility* of incessantly preaching Dharma as his only task in life. And as, according to the dictates of the Hindu, Islamic, Hebrew, Christian, Parsi and other religions, Dharma is as illimitable in its jurisdiction as God Himself, we have the duty of preaching Dharma to the world in *all* the aspects of life (not excluding even the “ secular”). If and when earnest and enquiring souls seek our spiritual guidance on a political, social, industrial, economic or other so-called “ temporal ” question, we can no more shirk our Duty of honestly and conscientiously enunciating, interpreting, preaching, adumbrating and *even inciting to the practice of* the Dharma on such a question, than we can with regard to purely ceremonial matters relating to prayers, worship, marriage, funeral obsequies and so . . .

An "Acharya" has, in fact, been defined in our Sacred Literature as one whose only business it is to practise his own personal and individual Dharma, and; by every means in his power, *make* others practise theirs.

From this point of view, no department of life is too sacrosanct to escape *our* jurisdiction and we are therefore called upon to shoulder the (often unpleasant) task of preaching the Raj Dharma and the Praja Dharma. Un'fortunately, to many people all the wide world over, fulsome flattery is more acceptable than wholesome advice; and if, therefore, in the conscientious performance of our Dharma of Dharmopadesh without any regard to personalities, races and feelings but solely as our unshirkable Religious Duty, we give offence to the Raj or the Praja or even both and are called upon to bear the consequences thereof in the shape of personal suffering, we ought to and do take it all cheerfully *as part of the game*.

Unswerving allegiance to Dharma and Truth has always—in Sacred as well as in profane History—entailed enormous suffering and claimed terrible sacrifices. The true man of God has always had to suffer indescribable torture, not merely at the hands of godless worldly officials but even alas ! at those of really godless official "Ecclesiastics" ! Oh ! what hideous crimes and fell atrocities have not been perpetrated against really inoffensive people in the sacred names of Peace and Order on the one hand and of God and Religion on the other !

Taking the Praja-side first, we may frankly mention that there are some vital points whereon we too (like Hazrath Maulana Abdul Bari, Dr. Rabindranath Tagore, Mr. C. F. Andrews, Mr. Jayakar, etc.,) have not been able to see eye to eye with Mr. Gandhi and other leading Congressmen. For example, while enthusiastically desirous of and actually inciting to India's economic uplift and independence and while cheerfully recognising, blessing and advocating the Spinning Wheel as the eloquent emblem thereof, we have not—even after reading and several times re-reading Mr. Gandhi's reply to Mr. Andrews—been able to approve of the indiscriminate burning of foreign cloth which India has already paid Manchester and other places for ! The sending of it to sufferers in Smyrna or elsewhere we can and do cordially agree to ; but the burning of it all is simply revolting to us and our conceptions of positive and constructive methods afore-explained. And, in our discourses and lectures at Dakor and elsewhere, we have been stating such facts candidly and have even written to Mr. Gandhi about them freely. If, by so doing, we stand to

incur the displeasure or dissatisfaction of this or that Congressman, we simply cannot help it and we cannot, on any such account, cease from conscientiously explaining the Truth as we ourselves honestly understand it.

And if, secondly, by our placing of Dharma thus on the highest pedestal, we come into conflict with a Government that places crooked diplomacy above the straightforward Dharma and selfish policy above impartial justice, and if we find ourselves clapped into jail in consequence thereof, even then we have absolutely nothing to regret ! Surely, prison life *earned as the wages of the Dharma* is no Disgrace ! Sacred history tells us that the Lord Shri Krishna (whom millions of devout Hindus worship even to-day) was born in Jail and was concealed, so to say, in Gokul for years from the tyrant Kansa ; that Adi Shri 1108 Shankaracharya (our own Spiritual Progenitor) stood thrice in deadly peril on account of his Dharmic preachings and was rescued twice by His disciple Shri 1108 Padmapada Acharya and once by direct Divine Interposition ; that the Holy Prophet of Arabia similarly underwent enormous persecution ; that Joseph the favourite son of Israel was imprisoned for refusing to commit adultery with Potiphar's wife ; that the Hebrews under Aaron and Moses were oppressed by the Egyptians for desiring to perform a religious sacrifice in the wilderness to their Jehovah ; that John the Baptist was imprisoned and beheaded for condemning the Tetrarch Herod's incest with his own brother Philip's wife Herodias ; that Jesus Christ the Prince of Peace (the supposed "Lord Master" and "Saviour") of the Western world to-day) was first concealed in Egypt for years from Herod and was finally condemned by Pontius Pilate *to wear the crown of thorns and bear the cross of shame* on Calvary as a traitor to Rome, simply because He preached to the Jews the Kingdom of God ; and that as for the Jews (to which Europe-persecuted unhappy eastern race, England's present Viceroy of and Secretary of State for India both belong), the stoning and otherwise maltreating and murdering of the prophets of Jehovah was almost the daily routine, pastime and recreation of later day Israel and, (according to the heart-rending but bootless lamentations of Isaiah, Jeremiah, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habukkuk, Zephaniah, Haggai, Zechariah and Malachi—12 the four major and minor prophets of Israel, was solely responsible for the political annihilation and final scattering up of Jehovah's own chosen people ! There is nothing therefore to be ashamed of in prison life or any so-called "punishment" meted out by bloated temporal might to humble Spiritual Right !

Even from the worldly standpoint of public reputation and disgrace (which a Sanyasi, however, has no business to worry about), we notice that Lala Harkishinlal who was condemned as a traitor to the King and had his entire property confiscated under the Chelmsford—O'Dwyer administration is now the trusted Minister of the Punjab under the Reading—Macdugan rule and Lord Reading is inexpressibly enamoured of and publicly eulogises his brilliant sense of humour: and that, in spite of Mrs. Besant's denunciations of Mr. Gandhi and the Non-Co-operation programme of the Congress with greater virulence than the Government's, we here (in the Karachi Central Jail) have been having the instructive and interesting experience that, since our committal to the Sessions, even Nationalist papers of the ultra Non-co-operationist type of the "Bombay Chronicle" are being allowed to us but poor Mrs. Besant's "New India" alone is bracketted with Mr. Gandhi's "Young India" and proscribed! With such experiences (especially like Lala Harkishinlal's) about the value to be attached to the encomiums or the prosecutions emanating from our Imperial and Provincial Governments, we wonder if there is to-day even a single benighted soul in all India (or elsewhere) who will infer credit or discredit to us, merely from any such action on the part of such an utterly discredited and disreputable administration!

No one compelled us to don the saffron robe of Sanyas. On the other hand it was we that voluntarily sought it and—after 16 years of weary longing—finally accepted the long longed for life of renunciation. And the heart and the quintessence of Renunciation consists in the performance of our allotted Dharma in absolute disregard of happiness and misery, profit and loss, victory and defeat! At the time of taking Sanyas, we (Sanyasis) with appropriate Mantras full of deep spiritual import and beauty—formally renounce the whole world (including father and mother, wife and children, land and lucre and even temporal governments and national congresses) and we swear eternal and indivisible allegiance to our only Lord and Master, to wit, the "Everlasting Yea" of Carlyle! and so, in accordance with that pledge of Sanyas we have no option but to speak out the Truth and preach the Dharma without fear or favour.

And as for the loss of personal liberty, which prison life entails, we believe in the Valiant teaching that correct knowledge of and undeviating adherence to the Truth alone leads to final Liberation. The Lord Jesus Christ too said (St. John's Gospel VIII 32): "Ye shall know the Truth and the Truth shall make you free." And so, as Tiresias's the blind

Greek Seer (in Sophocles' Drama) said to (king) Oedipus Tyrannus of Thebes, we have in us the strength of Truth which has *already* given us the highest and truest liberty conceivable whatever may be our petty physical restrictions of the moment. And, after all, is not this world itself a huge prison and our bodies the prison-cells which our Divine Spirits are all locked up in and restricted by? Well and truly did the poet sing :—

“Stone walls do not a prison make”

Nor iron bars a cage.”

Many people may look askance at this doctrine of Truth and Satyas as being of the obstinate and fanatical nature of Mediaeval Ecclesiaticism which, during the reign of King Henry the II (of Anjou) in England, cost that so called “turbulent priest” St. Thomas a Becket of Canterbury his life and put him to suffering at the hands of cruel assassins. But we need only answer and say that, to those who have realised that ineffable and inexhaustible Joy which is the inherent internal characteristic of the Soul, which does not and cannot need any sort of external enjoyment for its upkeep and maintenance, and whose incomparable and imperishable Effulgence, no external pains can ever avail to cloud off—to us, hatred, and fear and sorrow and worry and even doubt are, utterly and in the very nature of things, ABSOLUTELY IMPOSSIBLE.

If then, we should and do speak the Truth and preach the Dharma as a Religious Duty of ours, which we cannot possibly shirk, what should be and are our frame of mind and our object therein? Our frame of mind is one of absolutely dispassionate performance of Duty; and our object is merely the lasting uplift of all concerned and *particularly those whom we condemn*! Or, in other words, it is all Love and no hatred. Just as a parent or a doctor advises a child or a patient what to do, and what to shun, not because of hatred, but solely because of Love, and just as the prophets of Israel spoke with their hearts bleeding at the criminal and suicidal follies of Israel and solely for the uplift of Israel; and particularly as the prophet Samuel in the very act of denouncing and rejecting King Saul as ordered by Jehovah is pathetically said to have “mourned” long for Saul; so too, have we this unpleasant duty of preaching the Raj Dharma and the Praja Dharma to the Raj and the Praja *for their own good*! As the Apostle puts it, “Whom the Lord loveth, He chasteneth”; and we too have to follow God’s example and method, and whom we love, we have to rebuke! Personally it makes no difference to us in the least and

yet it is our bounden duty to remind all, *for their own sakes*, of the terrible words "Vengeance is mine" saith the Lord,—and rescue them, if we can from the coming, nay imminent, consuming wrath of God !

We remember to-day, quite vividly, the touching incident at Benares session of the Indian National Congress in December 1905 wherein, after the deliberations were all over and the usual vote of thanks to the President (the late Mr. Gokhale) had been spoken on by some Indian speakers, the late Miss Margaret Noble rose to thank Mr. Gokhale *not* (as the others had done) for his great political services to India, but for his still greater spiritual services to England in trying to make England just, and thus *saving her from herself* ! For, as the Tamil Poet pithily puts it, *It is the tears of the oppressed—not the hostile armies—that undermine the thrones of mighty monarchs* ! And so, Miss Noble nobly regarded Mr. Gokhale as really greater benefactor to England than to India ! It is in this spirit and with this outlook that we who place Dharma and Justice above diplomacy and state-craft have got to and do labour.

If, however, the patient or the child will not merely refuse to profit by the salutary—though perhaps often times (physically or mentally) bitter-medicines or advice of the doctor or the parent, but will even assault the latter therefore it is no disgrace to the latter but untold suffering to the former, that will really ensue therefrom ! And so, even as Amaziah the officially appointed "High Priest" of Bethel (the House of God) himself endeavoured and also instigated Jeroboam II. (the foolish son of Joash and King of Israel) to gag Amos the true Prophet of Jehovah from carrying Jehovah's message of uplift to the King and to the people and it all turned ultimately detrimental not to Amos the stern Truth speaker but to Jeroboam the momentary-pleasure-seeker and to Amaziah and the false-praise-giver : so too, if self-advertised and officially favoured "religious" individuals and mandals in India (whom we need not name here) will not merely wink or connive at ignorant blunders of the Raj or the Praja or both (which will be bad enough, in all conscience) but, like Amaziah or (Caiaphas) fawn on, flatter and instigate either against those whose only function is the preaching of Dharma as commanded by the Lord Almighty, surely it cannot hurt the latter but will only recoil boomerang-like and redound to the infinite and irrevocable injury of the flattering instigator and the duped instigated ! Nor can we, any more than the Prophet Amos, refrain on any such account or at any body's bidding from our God-ordained Duty of Dharmopadesha !

III. THE CHARGES

With this exposition of these general principles of our Dharma as a Jagadguru and its bearing on the affairs even of so-called "secular" life and with a reiteration of our absolute innocence of any attempt or conspiracy to tamper with the loyalty of soldiers, we had indeed, at first, actually concluded our statement. But, we subsequently learnt, from Professor Vaswani of Karachi (the first Karachi Gentleman who Visited us here in jail) that the Resolution of the Conference did actually contain a reference to Muslim Sepoys and declared it *Haram* for any Muslim to continue any longer in the Army. And therefore, it has become necessary for us to add to this statement considerably.

But we must first formally repeat that we knew nothing of any such item on the programme, were not called upon to and did not, in fact, say even a word on it and cannot therefore be charged with any offence under Sections 131 or 505 or 120B. For, if mere presence at the meeting (without understanding even a single syllable of the proceedings) could suffice to make *us* guilty, much more therefore—to use an Euclidian expression—should it have that effect in the case of all the thousands who attended the Conference, *understood* all the proceedings and voted deliberately, enthusiastically and unanimously therefor ! Or, in other words, the whole Conference should have been declared "an unlawful assembly" and hauled up under the sweeping embrace of section 149 I.P.C. We, however, notice that this is not the Government's position.

It is remarkable that the warrant against us personally —*i.e.* the sixth accused in this case—as copied by one of our pupils at Dakore and also by the Jail Superintendent at Karachi—singled us out for the honour of a charge under Section 105 I.P.C. (relating to or arising out of, murder in self-defence) ! We are not aware of even yet having had the pleasure and the privilege of even the remotest connection with a case of murder, *not even* be it noted, *as the murdered person* ! The only murders we can plead guilty to are of Adharma (unrighteousness) in all its forms ; but we are not aware of any section of the Indian Penal (or any other) Code which we can be tried under, for that glorious offence and even if there should be any such section, unknown to us, somewhere, we would fervently bespeak the Courts' consideration for the fact that the very continuance, undeterred, of such unjust prosecutions (as ours) prove that injustice has not died out of the world yet, and that, the utmost

charge against us, therefore, can only be of an attempt at, not the actual perpetration of, murder (of injustice) ! As, however, this mention of section 105 against us has subsequently been declared to be an error, we tender hearty thanks for this small mercy and pass on to the next section *i.e.* 120 B (Conspiracy) !

Hereon we have to say that, unlike Maulana Mahomedali who, in the crowded Kanyashala had at least his heavy breathing brother to "conspire" with at mid-night (in the derivative sense of that term, *i.e.* breathing together) we in our spacious quarters miles away out of the city, had only three boy pupils and our cook with us for the whole building, slept altogether alone, and could therefore have been guilty only of mid-night *Unispiracy* (breathing alone) for which, however, two new sections (say 120 C and 120 D), defining the offence and the punishment have yet to be manufactured and incorporated into the Indian Penal Code, pending which we have necessarily and helplessly to deny ourselves the pleasure, the privilege and the honour of pleading guilty on this charge too !

And then again, whereas, according to the elementary common sense and the rudiments of the English Language as well as the open admissions and the tacit implication of the Indian Penal Code itself, it is the very essence of Conspiracy that the "conspirators" conspire secretly, it strikes us forcibly that a charge admittedly arising out of a Resolution which was *unanimously* passed at a *public* Sessions of an *All-India* Conference, which had been openly foreshadowed and promised by the special as well as the normal sessions of the Indian National Congress at Calcutta and Nagpur in September and December 1920, which Mr. Gandhi is now said to be regretting he had not been present in Karachi, in July 1921, to support and which, we understand, is now being passed by all the Congress Committees and Khilafat Committees all over India—surely such a charge cannot, by any intelligible intellectual process (however far fetched), be brought under section 120B I.P.C. (conspiracy) ! And we cannot, therefore, help feeling that the charge that has actually been brought against us thereunder is simply too preposterous to be tenable even from the merely legal point of view and that any attempt even under section 149 (the only one that can possibly apply), to extinguish the Zeit-Coist in bound, under these circumstances, to be futile as King Canute's command to the waves of the sea !

Passing on to the main charges, *i.e.* those under sections 131 and 505 I.P.C. we have to place emphatically and indelibly on record, our

wonder that even if we had had no temperamental, religious or political objections, even if we had been co-operators (which, thank God, we are not) with a government whose wholly original and inimitably brilliant conception of "co-operation" is that we should bow and agree to everything they say and do or, at the most, should become members of the Mutual Administration Society and beg with folded hands and with fulsome flattery for this or that elementary right (including even the right to perform our Religious Duties) as though it were a mighty condescension and a celestial favour and even if we had been desirous and prepared to defend ourselves in the usual manner, we personally (*i.e.* the 6th accused in this case) have found absolutely nothing in the whole prosecution evidence or argument before the Committing Magistrate to base a single cross-examination on, or to defend ourselves against! Not a jot or tittle vestige or shred, of evidence was presented before the Magisterial Court of Enquiry, to the effect that we ever uttered a single syllable anywhere about the Army or the Navy or alluded by name or even by implication thereto! Beyond an allusion to our arrival at Karachi on 7th July, the Reception given to us at the station by the people of Karachi, our procession through the city and the fact that we made our (second) speech at the Conference, the entire prosecution evidence has, consistently and persistently refused to do us the honour, of even a casual reference to us or our residence, let alone any sort of proof that we ever spoke on the Army question at all. The most eloquent, convincing and clinching proof of the truth of this contention of ours was furnished by the significant fact that the prosecution witnesses and the resourceful Counsel for the Crown and even the committal order merely referred to our speech and did not file or quote from any report thereof, or extract therefrom as an exhibit, for the very simple reason that the speech actually contained no reference whatsoever to the Army and so could not possibly justify the unrighteous attempt of the government to connect us with sections 131 and 505.

Looking carefully into the depositions of all the various witnesses who were trotted forth one after another in the Lower Court as C I D. reporters or as Press reporters who had been present at the Conference we note, that, in the case of every one of them, the learned Counsel for the Crown had with reference to the speeches of all (but ourselves and Fir Saheb)—his stereotyped and unvarying series of questions as to who the speaker was, what language he spoke in, whether the witness had taken correct short hand notes of the speech whether he was expert therein,

whether the notes contained only what the speaker had actually stated and whether a long hand transcript had been prepared from the shorthand report and the witness was then made to produce and file the longhand transcript as an exhibit; but when each witness came to *our* speech, Mr. Elphinston merely elicited the simple statement that we spoke next and that we spoke in English but, without putting the usual further series of questions about shorthand notes and longhand transcripts and so on, he invariably and precipitately—as if he were treading on hot coals—*decamped* to the next speaker ! We solemnly contend that this was solely and simply because the filing of our speech and an analysis of its contents would certainly have had the effect of not merely failing to prove our partnership in the alleged conspiracy in respect of the Army but of positively proving the exact contrary with logically, scientifically and even geometrically irresistible precision ?

Add to this the facts mentioned, at the very outset, that we did not cross-examine the Crown witnesses and that all our papers of over 15 years past had been illegally attached by the Police and brought over to Karachi and yet, not an atom or even an electron of evidence has been forthcoming to substantiate this nebulous charge against us ! The inference is—under the circumstances—irresistible that the prosecution has not had the elementary honesty and rudimentary manliness to state even once candidly, even at the final argument stage, what it actually knew all the time, *i.e.*, that our speech contained absolutely nothing about the Army and that the whole head and front of our crime, in the eyes of the Government, was really that we had been present at the Khilafat Conference and had expressed our Religious sympathy with Islam, the Khilafat and the Angora Government (which the Government of India, too, has, all the time, been obstreperously expressing its lip-sympathy for and theatrically shedding its crocodile tears over) !

We need not content ourselves, however, with this argument from silence, *i.e.* the negative inference (however obvious) from this deliberate, consistent and ingenious act of omission on the part of the Prosecution. We can go further and call attention to the positive tell-tale fact that the reports of the Conference in the Nationalist "New Times" and even the Anglo-Indian "Daily Gazette" (both of Karachi) which were actually filed by the prosecution in connection with the speeches of the others and which happily contain a report of our speech too, *amply suffice by themselves* to bear out, sustain and prove our contention that we never spoke about the Army !

In passing, we would just call to mind the fact that the C. I. D. witnesses stated that the whole assembly (*including themselves*) stood up and passed the Resolution! And hence the inclusion of Maulana Shaukat Ali! We would modify that statement with the fact that, as required by the rules of our Order, *we alone continued sitting at all times!* If Maulana Shaukat Ali could be hauled up for merely standing up when the Resolution was being passed, what about the C. I. D. men who *understood* the meaning of the Resolution (as we alone did not) and who too, *on their own showing*, stood up to signify their support of and assent to the Resolution! This merely in passing.

The Counsel for the Crown referred pompously, in his argument, in the Lower Court to our arrival at Karachi and the fact of our having spoken, as "proofs" (!!) of our participation in that fictitious conspiracy! Now supposing, for a moment, just for argument's sake, that we had *opposed* the Resolution *in toto* or dissented from parts thereof, would our mere presence and speech inculcate us? Or, would it be necessary to go into the contents of our speech? And why, but for the consciousness of utter futility, did he fail to ask his legion of witnesses a single question thereon, to argue thereon and even to file our speech as an exhibit in the case!

IV. THE STAB FROM BEHIND.

It is evidently this utter bankruptcy with regard to relevant evidence against us actually before the Court that accounts for the Government's indefensible out-of-court proceedings against us in the shape of communiques, circulars, etc., calculated to prejudice the minds of the judges and the unknowing, undiscerning and unthinking public against us personally by means of the unscrupulously libellous allegation that we are *not* the Jaggadguru Shankaracharya of the Sharda Peeth but only an *Impostor*! Unlike the Government which has shown itself so miserably and terribly lacking in scrupulous adhesion to the fundamentally requisite judicial attitude which alone is worthy of it in Criminal prosecution, civil litigation and private controversies *we* cannot forget that the present case is concerned not with the Sharda Peeth Gadi but only with our speech at the Khilafat Conference of July last in Karachi. And therefore we shall not refer to the Peeth affairs, over and beyond what inevitably arises out of the Government's own underhand efforts against us in connection with and as a sort of collateral security and prop for the grave criminal prosecution which they have baselessly and basely launched against us!

We need merely state that His Holiness Swami Shri 1108 Trivikram Tirathiji Maharaj (the late Shankaracharya of the Sharda Peeth), recognised as such by His Holiness the Shankaracharyas of Puri, Shringeri, Kumbhakonam, etc., the Maharaja of Kashmir, Dhurbhanga, Kathiawar etc., and all the religious associations all over the country like the U. P. Dharma Rakshasana Sabha, The Bharat Dharma Mahamandal, etc., initiated us on the 4th July 1919 at Benares as His Pata shishya (Successor-designate), that we officiated for Him (during His illness and debility from March 1920 to December 1920 ; that He formally invested us in December 1920 with the full powers and the authority of a Shankaracharya and that on the 27th February 1921 at Jasdan, in the presence and with the co-operation of the officials of the Jasdan State and of Mr. K. J. Bakshi of Rajkot (Ex-Administrator of Porbunder State and Ex-Chief Justice of Junagadh State) and with the Vedic ceremony of Pattabhisheka (Coronation) enjoined in the Shastras, His Holiness *with His own Holy Hand* installed us on the Peeth as Jagadguru Shankaracharya and retired therefrom for a quiet literary life. His Holiness is, happily, still in the flesh and can substantiate all these statements. So can Mr. Bakshi of Rajkot and the Jasdan State authorities. Mr. Bakshi gave telegraphic information about the installation to all the Shankaracharyas, the Maharajas, the Mahamandals, etc., and the Press; while the Chief Magistrate of Jasdan State gave a detailed report of the same to the newspapers. Our connection with the Sharda Peeth is thus securely based on the impregnable rock-foundation of our direct and immediate Spiritual descent from and public Installation by the late Shankaracharya Himself and is thus—both morally and legally—as unimpeachable and binding as the anointing of Aaron by Moses or the anointing of King David by the Prophet Samuel or the appointment of Lord Reading by His Majesty King George V to the Viceroyalty of India ! The fact that, for their own subterranean political and personal reasons, the Government of India and Bombay dislike the choice, can no more do away with the moral and legal fact of our Shankaracharyaship or invalidate it, than can the anti-Reading fulminations of some anti-semitic journalistic firebrands of England, do away with the fact of Lord Reading's appointment or invalidate it !

We may add that we have received from our Shri Guru Swami and are using the images, gold and silver maces, chhatras, chamaras and other regal emblems and paraphernalia and Shawls, laces, Silks, etc., presented to Him by the present Shankaracharyas of Puri and Shringar and the Maharaja of Idur, the Maharani of Singahi, etc., and that we

have ourselves received similar offerings from the Maharajah Holkar of Indore, and the Maharajah of Dewas (junior) in recognition of our Shankaracharyaship and have actually been worshipped by them, as such with flowers, etc., in the orthodox Hindu style (without any reference to our political complexion).

We may also mention that *all* the people of Dakore (our old Peeth Headquarters) recognise us as the Shankaracharya of the Sharada Peeth, that even the (Government) Educational Inspectors, etc., performed our Pada Poojah (*i.e.* worshipped our feet with flowers, etc., and the ritual followed by orthodox Hindus) that the Kaira District Police (from the European D. S. P. to the Gujrati Sub-Inspector) also recognise us (as exemplified in their reference to us—*even after our arrest*—in the Panchnama connected with our box of papers—as Shri Shankaracharya *without our name*) and that, if a referendum be taken today at Dakore (80 p.c. of the people being orthodox Hindus, who have never dreamt of politics, 15 p.c. being co-operators and 5 p.c. being non-co-operators) the votes of persons recognising us as the real Jagad Guru will be found to be exactly 100 p.c. no more, no less !!!

We are thus not a “political” Shankaracharya brought forward for their own purposes by the Congressmen and the Khilafatists, but the actual Shankaracharya of the Sharda Peeth, recognised and worshipped as such by hundreds of thousands of wholly non-political and even anti-political orthodox Hindus at Dakore and all over the country. In this connection it is interesting to mention that Mr. K. J. Bakshi of Rajkot (afore described) is sharply divided from us in politics and that Pandit Brijnath Sharga, M.A., LL.B., of the U.P. Dharma Rakshan Sabha, is the Secretary of the Lucknow Aman Sabha and the author of some anti-non-co-operation handbooks ; and yet, being, unlike the governments of India and Bombay, of a judicial frame of mind and of a Truth-loving disposition, and consequently, constitutionally incapable of any attempt at the suppression of the Truth under any sort of *camouflage* for personal, political or party-purposes, both of them recognise and venerate us as their Shankaracharya and discuss all such political or other controversial matters with us freely, frankly and fully. And we also find that in the recent monster meeting of the Orthodox Hindus of Lucknow to protest against the Government’s false circulars about our “imposture,” it was P. Brijnath Sharga who moved the principal Resolution of protest against such misrepresentations; and that, as a result of this sacriligious action of the

Government against us, the Orthodox people of Lucknow who were co-operators or indifferent so far, have now become Non-Co-operators !! And only one dissented !!

When, however, at the end of our tour in the Punjab in April and May 1921, a pair of solicitors wrote a letter from Bombay to the D. S. P. of Amritsar that the real Shankaracharya of the Sharada Peeth was not we, but a certain client of theirs (into whose name, qualifications, etc., we need not now go, but of whom it would suffice, for our present purpose, to state that he is illiterate, that he is not spiritually connected with the Peeth that he was not recognised (as against our Shri Guruswamiji) by a single Dharmacharya, a single Maharaja or a single Dharmic Association and that ever since Shri Madhava Teerthji (*our Predecessor's Predecessor*) passed away exactly five years ago, he has been a claimant to our Peeth in the Civil Courts of Ahmedabad and Bombay and yet, in spite too of our refraining *on principle* from all participation in that litigation, he is no nearer the Peeth to-day than he was when he began this bootless business imagine the Punjab Government (which had had the worst of it in it, tussle with us at Amritsar, in its unrighteous endeavours to gag us from lecturing on "Dharma") descending to the melancholy meanness and the malignant vindictiveness of issuing the solicitors' private letter as an "Official Communiqué" of its own and advertising it all over the country by means of a telegraphic reproduction of it to all the papers from Simla through that Government tool, the utterly partisan Associated Press ! Surely, when an individual who has failed ignominiously on all sides (including the Civil Courts and his "*own*" place Dakore) is foolish enough to write privately in this manner to the Government, the Magistrates, the Police, etc., about his claims—relating to and determinable solely by Ecclesiastical Hindu Law, the Government—if it had not been wickedly blinded to all sense of judicial impartiality and dignity and self-respect by its partisan political prejudices—would (as it should) have unhesitatingly thrown such letters into the waste-paper basket or, at the most, referred the correspondent to a duly constituted Ecclesiastical Court having jurisdiction over the affair in question ! And yet, on account of its spite and hatred against us, the Government was mean enough and vindictive enough to take sides openly, flagrantly and shamelessly on such a purely Ecclesiastical question and to issue an Official Communiqué thereon with the sole object of discrediting us all over India in general and in the Punjab in particular ! We wonder, however, whether there

was even a single individual anywhere who was really hoodwinked by and could not see clearly through, such transparently shady tactics !

Then came the disgraceful incident at Dakore wherein, when the authorities of Shri Runchhodji's temple (the most famous place of pilgrimage in all Gujrat) arranged, (as usual in the case of every new Shankaracharya of the Sharada Peeth, on his first visit to Dakore), to present us with a palanquin, shawls, laces, silks, etc., in recognition of our Shankaracharyaship, the Bombay Government had the shameless effrontery—at the suggestion of our unmentionable rival-claimant—to bring tremendous pressure to bear upon the poor old orthodox servants at the temple, by means of threats of all sorts, to prevent the function from materialising—an attempt which the local officials, under orders from above, kept up for three days and three nights in succession, but which, alas ! owing to the impossibility of bamboozling the honest and enthusiastic people (however, old, old-fashioned, orthodox, and ignorant) at the old Headquarters of the Peeth, ended in unalloyed discomfiture to the Government and its new ally, adding no doubt to its and his fierce hatred of us !

And thus, having, in pursuance of its well-known policy of "Divide and Rule" euphemistically called the "Balance of Power," pitched upon and secured an ally and a tool in the shape of a counter-claimant to our Peeth whom it could conveniently play off in its sordid intrigues against us and who possesses an excellent passport for the Government favour, *i.e.* that he denounces the Congress "lock, stock and barrel," the Government has now had the temerity to arrest us on an absolutely false charge, *knowing* it to be false, having no evidence whatsoever to adduce and yet relying doubtless on our reputed "Non-co-operation" principles to pull it through ! We verily believe that, if the Government had only unearthed and secured this ally and tool *before* our Punjab tour, it would very probably have shot us down (with Dr. Kitchlew, Mr. Girdharlal, Dr. Satyapal, etc.,) at Amritsar (*as it actually threatened and prepared to do*) and created a second edition of the Jallianwalla Bagh !

But, as a general rule, the blustering bully is really *at heart* a craven coward and so it is that we find this blustering "Government" first arresting us and then cowardly stooping (1) to the suppression (as long as possible) of the news of our arrest, (2) to the hood-winking of the public

on the matter by including us (in the Bombay "Government Communique") under the heading "others" after the Ali Brothers,(3) to describing us, in our warrant and elsewhere (when the name had at last to be published and could be concealed no longer), as "Venkatram *alias* Bharati Krishna Teerth" without the term Shankaracharya, thereby deliberately cheating the hundred of thousands of Hindus and others who know and venerate us as the Shankaracharya but have never even heard our correct name, (4) to the issuing of an Official Communique from Simla describing us as "a Hindu who calls himself Shri Shankaracharya" (as though Hinduism were incompatible with and a disqualification for, the Shankaracharyaship) and thus by suppressing *our* name alone, keeping up the mystification of the public as to our actual personality and correct identity, (5) to the publishing at Bombay of an Official Communique by the Official Fabricator and or Propagator of Mis-information ironically or euphemistically termed the "Director of Information," to the absurd effect that, whereas there were rumours about the Shankaracharya of the Sharada Peeth having been arrested and taken to Karachi for trial, "the person actually arrested is one Venkataram *alias* Bharati Krishna Teerth who has assumed that title!" (6) to the publication of the same sorry stuff in the "Sindh Official Gazette" from Government House, Karachi, on 23-9-1921 as Press Note No. 828; and (7) to the issuing of a Circular to the Karachi public in similar terms by Mr. W. W. Smart, the *smart* District Magistrate of Karachi, all harmoniously woven together so as to make Truth and Dharma *Smart* and bleed under the iron rods of Falsehood and Adharma! Here again we wonder if all this crooked and elaborate hoodwinking campaign really succeeded in throwing dust even into one individual's eye or was, in reality, utterly wasted!

The veriest Tyro in Indian Religious technique knows that, while an English Commoner on being raised to the peerage has the liberty to and does often voluntarily, *assume* a new name, a Hindu on entering Holy Orders has not the liberty to, but must necessarily and as a religious rule—discard the old name, and, not *assume* but, *accept* the name newly conferred on him by his Guru (Spiritual Preceptor) in accordance with the rules elaborately laid down for this purpose in the Hindu Scriptures! Thus, whereas Sir Rufus Isaac had the liberty to and actually did *assume* the name Lord Reading, Prof. Venkata Raman Saraswati on taking Sanyas (which, however, was on the 4th of July 1919 and not somewhere in 1916 as a lying message of the Associated Press gravely announced) had not the liberty to *assume*, but had perforce to and did

therefore *accept* the new name Swami Shri Bharati Krishna Teerth bestowed on him by his Guru ! Under these circumstances, it must be obvious that, to speak of us as "One Venkataram *alias* Bharati Krishna Teerth, a Hindu who calls himself (or has assumed the title) Shri Shankaracharya" is no less reprehensible than to speak of "one Rufus *alias* Reading, a Jew who calls himself (or has assumed the title,) Viceroy of India" ! And yet, such is the *exact* and mathematically identical course pursued by the supposed responsible and dignified Governments of India and Bombay in our case ! And to speak of us (as several prosecution witnesses and even Mr. Elphinston did) as "Venkataram" (which was not even our Purvashram name of our childhood) can only be compared to the describing of Mr. T. G. Elphinston as Tommy ! And, as in duty bound, the *Daily Gazette* and other Anglo-Indian newspapers have all faithfully published all such inane rot with the big-type Scare-heading "Aliases of an arrested Man !" and so on, all insidiously calculated to bias against us the minds of the people on the one hand and of the poor magistrates and judges who—whether Indian or non-Indian by birth—live, move and have their being in Government Communiques and Anglo-Indian newspapers !

If the Government had itself really believed this nauseating nonsense and gratuitous fiction about our being an "imposter" or if it had been an honest and manly Government, it should and would have openly prosecuted us for cheating, false personification, etc., and not dealt us this dastardly stab from behind in connection with another charge altogether !

The worst part of this famous conduct and conspiracy is yet to be laid bare. Not content with issuing these Communiques and Circulars with a view to cheat the public and to prejudice the Courts, the Government has also approached the Courts directly and sought to influence them. The aforementioned lying Press Note No. 828 of the "Sind Official Gazette" denying our Shankaracharyaship was sent in to find a place in the records of the committing Magistrate as special Exhibit B. in the case. And to make assurances doubly sure, there is also a telegram from the Assistant Commissioner of Sind against us to the Court through the District Magistrate of Karachi !

In this connection we are reminded of a recent civil case connected with our Gadi (into details thereof we need not now go) wherein the British Resident at Baroda wrote privately to the District Judge of

Ahmedabad to pronounce Judgment in favour of a certain party and Justices Heaton and Shah of the Bombay High Court were shocked at this letter which they saw amongst the records before them and animadverted in strong terms on the nefarious conduct of the British Resident at Baroda in thus endeavouring to influence and corrupt the even course of justice in a British Indian Court of Law ! We should like to know if there is any the slightest difference of a saving character in the atrocious conduct of the Assistant Commissioner of Sind in seeking to bias the minds of the Judges against us !

In the criminal proceedings in the Martial Law area in Malabar there is the interesting case of a Moplah who had been convicted of a certain charge, being brought *in prison clothes* on another charge before the Martial Law Tribunal and we find the Judges objecting fastidiously thereto on the plea that even the sight of the prison clothing is calculated or likely to prejudice the mind of the trying Judges against the accused ! And, consequently, they ordered him to be brought there after in his ordinary clothes. If then, even in the case of a duly tried and convicted man, it is reprehensible—even under Martial Law to give scope *through the prison clothing* even for the possibility of a prejudicial suggestion in the minds of the Judges, how much more so—under the ordinary Law which, according to Sir William Vincent and others we are now supposed to be prosecuted and tried under—must it be for the Government to go on deliberately piling up a huge heap of positively false and venomous communiques, circulars, etc., about the imposture of one who has not been tried on any such charge—or who is (both morally and legally) as truly the Shankaracharya of the Sharada Peeth as Lord Reading is England's Viceroy of India ?

When Sir Maneckji Dadhabhoy began to speak, about our case the other day in Imperial Council of State, the Government spokesmen came down upon him with the one word "sub-judice"! May we know by what law a comment on a (Sub-judice) case amounts to contempt of Court, only when it is in favour of the accused and does not amount thereto if it is against him.

It is, therefore, a moot question how far this flagrant and barefaced plot to prejudice the minds of the Magisterial and Judicial Officials and thus pervert the even course of justice by means of such a maliciously conceived, —cleverly planned and adroitly executed series of wholly

false and immoral publications in regard to a case that is still "*sub-judice*," will be recognised and punished by the legal Courts (as was sure to have happened, if some poor Indian Editor had been the culprit) and, how far even the miserable plea of 'Privilege' can avail to successfully stave off a criminal action launchable by us under Section 499 I. P. C. (Defamation) which (under "privilege") merely indemnifies magistrates, judges, etc., as regards any *bona fide* remarks of theirs arising out of the actual case before them and does not give any one (even the Governments of India and Bombay) the unlimited license to say aught against an accused in matters wholly *malapropos* of and irrelevant to the case actually on hand !

We note that even the "Indian Social Reformer" (which is, by no means a non-co-operationist paper, and which differs from us radically in political, religious, social and other matters) asks the same question as to whether the Law of Defamation (499 I. P. C.) does not apply to the Director of Information and calls upon him to retract and apologise handsomely for his libel against us ; and the present Chief Judge of Dewas, Junior (who has married a widow and is thus out of the pale of orthodox Hindu society) emphatically seconds the proposition.

We learn from the *Bombay Chronicle* and the *New Times* that in reply to the protests received from practically the entire people of Dakore against the Government's mendacity in respect of our Peeth, the "Director of Information" has indeed written to Dakore admitting that, in view of the existence of two other claimants to our Peeth the problem is a tough and complicated one, but assuring the people that *it was not and is not the Government's intention to take sides in a religious controversy*. It is remarkable, however, that even this tardy belated, half-hearted insufficient, unsatisfactory "Explanation (which is no explanation at all) is to be found merely as a private communication (which the recipient has sent to the Press) and has *not* been published—like the original lie—as an official Communique containing a straightforward and positive retraction of, let alone an honest apology for, that lie. And certainly much less does it come in as an exhibit into the records of our case. And yet we are asked and expected to be given enough to believe that the Government is *not* taking sides ! What else, on earth, has it been and is it doing all the time, we verily wonder !

We should not have objected in the same way as we now do—if the Government had had the honest courage and manliness to say openly that it did not care a farthing for Hinduism and our Ecclesiastical position as the Jagadguru (holding much higher office than Archbishops of Canterbury and York and comparable only to His Holiness the Pope of Rome) and that it had boldly arrested us in spite thereof. All that we now condemn is the Government's recreant and cowardly conduct in cheating the judges and people by sailing under false colours and taking shelter under lies and subterfuges. The Viceroy of India and the Governor of Bombay may have no sense of shame or of self-respect, but we, *on England's behalf*, feel ashamed of such cowardice and subterfuge on the part of the highest representatives in India of the mighty and puissant British Empire and we feel unavoidably compelled by these recurring experiences to concur with the American Professor who, while on a visit to England, felt nauseated by the interminable references on all sides to the sun never setting on the British Empire and gravely accounted for that unique phenomenon by saying "quite true, and quite necessary too. For, God, who is omniscient knows that He cannot trust modern Englishman in the dark and hence keeps throwing the Sun's light on them somewhere all the time."

It is impossible, nay positively immoral and sinful, to mince matters and speak in measured terms of the immeasurable inequity underlying the dastardly conduct of a so-called "Government" which has, with diabolical deliberation, determined to clap us into Jail somehow without even an iota of evidence (worth the name and adducible against us in the open Court) and, owing to this utter bankruptcy not merely in righteousness and in statemanship but also alas! in respect of evidence to convict us with (even according to its own codes of procedure), has the craven cowardice to stab us behind the back with its irresponsible *obiter dicta* and *ipse dixit*—not worth the paper they are written on and the ink wasted thereon—as regards the purely ecclesiastical question of our Shankaracharyaship of the Sharada Peeth ! Equally impossible for us, morally, is it to acquit the Imperial, Provincial and District Authorities of a dark and deliberate criminal conspiracy (punishable with 7 years' rigorous imprisonment under the 2nd part of Section 211, I.P.C. read along with 120 B. I. P. C.) organised for the purpose of convicting us on false and malicious charges (under 120 B, 131 and 505) one of which is punishable with transportation for life, *knowing* all the time as the prosecution procedure itself has clearly proved, that there *is no just or lawful ground* whatsoever for any such criminal proceedings

against us ! Unlike the Government which has both the will and the power to illegally attach even our Peeth papers of years before our coming to the Gadi and without even making a list there of and without producing a search warrant therefor, we have neither the inclination nor the authority to attach and scrutinise the correspondence between the three conspirators (Imperial, Provincial and District) on the subject of our arrest and incarceration and cannot, therefore, spot out and put our finger exactly on the arch-plotter in this conspiracy and apportion the blame and the responsibility, with mathematical exactitude, amongst the whole gang. But, even if Lord Reading had merely let himself be guided—or rather misguided by the Bombay Government, nothing can absolve him of his moral responsibility for keeping a rigorously judicial frame of mind absolutely proof against all possibility of taking sides for political or other reasons with parties in their religious or other private concerns ! Surely there is—*pace* the Bharat Dharma Mahamandal—no law yet, whereby private property or Ecclesiastical authority can be retained or must be forfeited according as one prefers to be of this or that political complexion which the Government has placed a premium or a discount on ! Surely Lord Reading cannot solemnly pretend that this act of his Government is a sample of his Nostrum “Equal Justice” which he has been advertising to the world *ad libitum* and even *ad nauseum* ! If, however, he has really been over reached “sold” in this affair (as in the case of the Munitions Muddle Case), let him have the manliness to come forward openly and make amends herefor,—according to the ancient Mosaic Law of Restitution laid down in Leviticus VI, 1-7 and Numbers V, 6-7 !

V. THE PRE-COMMITTAL ENQUIRY.

It is clear then that, besides the out-of-court *camouflage* and tomfoolery about our Peeth⁷ which we have already exposed, there was not even the ghost of the shadow *prima facie* case against us on the actual evidence adduced by the prosecution witnesses in the course of the magisterial enquiry which, apparently owing to the nerveless and panic-stricken and consequently irrational frame of mind which both the Court and the Crown seem all the time to have been in, was blissfully innocent of all regard for any known rules of procedure and made everything indiscriminately and impartially topsy-turvy from beginning to end !

The District Magistrate of Karachi began the whole farce with a prelude in the shape of a public notification about his precautions for the preservation of the public tranquility in Karachi during the days of our trial. And therein he referred to us as "some offenders" (not as "some accused"), as if our guilt was already an established fact ! And this frame of mind was evidently the one which the enquiring Magistrate had been instructed to show towards us and this naturally resulted in many serious errors of procedure and behaviour which rendered the trial wholly a farce and a mockery.

According to Section 80 of the Indian Evidence Act, no deposition is admissible as evidence under the Criminal Procedure Code unless it has been read to the witness in question in the presence of the accused or his vakil, and so on. And yet not a single deposition was thus read out to anybody in the presence of any one of us ! We wonder how these depositions which are clearly inadmissible for proving perjury were both sufficient and admissible for committing us to the Sessions.

Hours before the accused are examined or called upon to give their statement, and hours before the Crown Counsel argues on the case (which he had *not* opened with any sort of statement as to what he proposed to prove or to lead evidence on), the Judicial Commissioner visits the Khalikdina Hall to make sure of its fitness for our Sessions trial which is thus already an established proposition ! And, as for the inquiring Magistrate, he has the charge ready before calling upon the accused to say anything in defence and, as soon as, the Crown Counsel finishes his brief and legal apology for an argument, the Magistrate reads a charge off without calling on the accused—even at that stage—to say aught they may have to say in reply ! And worse still, on 27th September 1921, i.e., when the Crown Counsel had just examined a handful of the prosecution witnesses and had several cartloads of them still to examine, he applies to the Court for permission to summon two originally unmentioned witnesses on his side and gets from the Magistrate *an order in writing* (Exhibit E) to the effect that the *Committal proceedings will not be delayed therefor and it will do if these men are produced in the Sessions Court* ! What clearer proof can there be of the fact that the Magistrate had been officially and officiously instructed and has immorally and illegally agreed, to commit us to the Sessions without even hearing the prosecution evidence, let alone the defence statement ! And yet when some one points out too late the obvious fact that, according to Section 219 of the Criminal Procedure Code, supplementary witnesses may—if

need be—be examined even after the committal, but *only before the Sessions* and only by the Committing Magistrate and that there will be difficulties in their production otherwise in the Sessions Court, Mr. Talati is compelled to bow down to the inevitable and begin the whole business again in Jail in our presence just two days before the Sessions ! What a farce and what a travesty of justice is it that men who are thus openly prebaissed against the accused and who can commit them to the Sessions without caring even to hear the prosecution evidence, are set over us with powers to pronounce dooms of death, transportation for life and the like !

The Court was in such a hurry over the proceedings as to read off the charges without explaining them and without having them rendered into Urdu ! And we were brought into the Court again two days later for hearing the charges read out in Urdu ! If even such a small flaw could thus need rectification, how much more so should the more serious and terrible defects and illegalities ? Surely, it was a case of straining at a gnat and swallowing a Camel !

Wherein is the difference between such a trial and an Executive order of Internment, or Deportation, etc. ? Much is being made to-day of the proposed rescinding of the Rowlatt Act, etc. But what is the good of it all, if the ordinary law is to be so mismanipulated as to equal or even out-Rowlatt the Rowlatt Act ? The only difference, so far as we can see, will be that whereas now, under the Special Acts and Executive Orders, we have the advantage of being regarded as possibly honourable people who have not been regularly tried, we shall hereafter, under a deliberate prostitution of the ordinary law, be supposed to have been tried, found guilty and convicted ! Is this really the change for the better or, at any rate, the change which our moderate and co-operationist friends have been panting for and congratulating the country on ?

In going into these details of these wholly illegal proceedings, it is not our object to get off on the strength of these technical flaws. On the other hand we wish our case to be judged solely on the intrinsic merits of the evidence against us and our defence statements. Nor do we desire that the case should be sent back to the same or another Magistrate for re-trial in accordance with the rules of procedure. On the contrary we

feel that, in spite of our temperamental and irrepressible optimism and cheerfulness and the extreme kindness with which the jail people are looking after us, we are, as under-trial prisoners—"neither fish nor flesh nor good red herring" and the sooner the final proceedings in this case are concluded, the gladder we shall be. Nor even thirdly is it the case that we are putting on record the fact that our sense of sacrosanctity of these rules of procedure has been shocked! In reality we care nothing for them and do not, in many respects, approve of them. Our whole object herein is to demonstrate, with unanswerable facts, what scant respect is actually paid thereto by those who pretend to believe therein and swear thereby and what abysmal depths of degradation the so-called 'Courts of Justice' have deliberately sunk to in British India to-day!

But, as our individual case in the magisterial Court was practically an absolute blank which no perfection or defect of procedure could make, mar or alter, we need not enlarge thereupon but would only call attention to the astounding mentality of the Magistrate in refusing to hear our statement on the actual evidence before the Court, not because of any irrelevancy or any political or other digression but just because, according to the rules of our Order (corresponding, mind you, to the clear injunctions of the Old and the New Testaments about Nazarites, Priests, etc.), we could not stand and address any one except our own Guru and other Spiritual Elders and superiors, while the Magistrate—for reasons which were and still are inscrutable to us, under any known Religious Scriptures or procedure codes—was pertinaciously anxious to claim towards us the relationship of a spiritual father!!! And then, even after the so-called 'argument' of the Crown Counsel, the Magistrate did not give us—the (by-himself)—solemnly promised opportunity for our written statements or oral arguments, but proceeded straight away to read off hurriedly his order of committal of us to the Sessions—an order which had been ready hours before the oral statements of the others and the Crown Counsel's arguments were actually concluded! Thus comes it about that, even without any evidence from the prosecution witnesses against us and without any statement from us (oral or written), we find ourselves lightly—nay flippantly—committed to the Sessions!

And this takes us to the question of our personal Religious Liberty and the Viceroy's specious claim of a few days ago that his appointment to the Indian Viceroyalty by the Christian King of England was a suffi-

cient and convincing proof that, under the British Government, there could be no religious persecution in India ! We know not whether Lord Reading is a real live orthodox Jew or only an Englishman in whom, the Jewish element subsists merely as a racial accident of birth and has got practically snuffed out of existence on the religious side and, therefore, we have neither the right nor the desire to dogmatise thereupon. But may we point out generally that toleration is one of the easiest things in the world towards persons of an alien race or religion when they have, in actual daily life and for all practical purposes, been assimilated by us and that the crucial test of tolerance *versus* persecution comes in, only when a fundamental conflict arises, not merely in theoretical doctrines of metaphysics or private worship, but on practical precepts of everyday public life ! Leaving aside, for a moment, the root question about Islam and the British army which forms the basis of the present prosecutions, what shall we say about the wonderful magisterial ruling whereby we were deprived of our right to make a statement, because the religious rules of our Order did not permit us to address him standing and he would not permit us to speak sitting ! Is this not in itself an eloquent illustration of and convincing commentary on, Lord Reading's contention about religious toleration under British Rule in India ?

Moses, St. Paul and others have laid down rigid and elaborate rules of conduct for Nazarities, Priests, etc., as regards Pidyon Ha Ben (Redemption of the Firstborn), shaving, covering and uncovering of the head, sitting and standing, and so on ; and we too have similar rigorous rules in our Hindu Scriptures about Sanyasis, etc., and other such matters, which you might tyrannically—by the application of Brute Force—coerce us into breaking, but which we cannot possibly, of our own accord, transgress ! And, although such rules did not, in the present case, involve any sort of conflict with any religious rule of Zoroastrianism or any other creed or with any Code of Law and although, we made it clear that there was no disrespect intended for the Court, but only an insurmountable religious disability which we were labouring under, even if such a totally innocuous case, the Magistrate had the hardihood to harshly assert that it was *his* order and “*must be obeyed*” (in preference to the dictates even of our Religion) ! If, even when there was no religious, political or other conflict of principles involved, there could be such an arbitrary and tyrannical exercise of authority for the mere pleasure of exerting it, how much worse is it bound to be for all chances of religious toleration when such a conflict is really involved ! A

system of Government, Education, Procedure and so forth, which is *non-moral* and hence seemingly tolerant—not as a deliberately considered and positive virtue, but merely owing to callous indifference with regard to Religion—must necessarily and speedily become positively *immoral* and lead to all such petty persecutions !

As, however, we have already stated, we voluntarily took Sanyas and are bound by the rules of Sanyas. Even an ordinary association has its own rules, regulations and bye-laws which are binding on those who pledge themselves to abide thereby and deliberately become its members. So too, having correctly understood the rules of Sanyas, carefully counted the cost and deliberately entered the Holy Order, we can see no justification for breaking those rules. And as St. John, St. Paul, St. James and even the Lord Jesus Christ have all—exactly like the Lord Shrikrishna—repeatedly declared that devotion to the Master and disobedience to His Commandments are horribly incompatible with each other and just as St. Paul frequently—in his epistles—describes himself as a “prisoner of Jesus Christ,” so too are, we (Sanyasis) Prisoners of our Sanyas Dharma and have to perform it in utter scorn of the consequences ! Acting, therefore, on Shri Bhartri’s Haris famous maxim :—

निन्दन्तु नीतिनिपुणा यदि वा स्तुवन्तु लक्ष्मीः समाविशतु गच्छतु वा यथेष्टम् ॥
अर्थे वा मरणमस्तु युगान्तरे वा न्याय्याप्तयः प्रविचलन्ती पदं न धीराः ॥

(i.e. Let worldly-wise men scorn or praise,

Let wealth come in or go out as it likes,

Let Death take place now or aeons hence,

The Righteous will not swerve an inch from the path of Dharma),

We had no option but to lose our right of making a statement, as we could not exercise it without violating our Religious principles !

And besides, as a general rule, gosha ladies, invalids and others having any sort of disability are given special facilities and consideration; and it is therefore a mystery to us why a case of Religious disability like ours was not treated even with elementary courtesy ! Insult was added to injury by the Magistrate’s original refusal to record our repeated statement about our religious rules precluding our standing to address him and by his insisting on simply recording that we refused to stand and address him, as if it were a purely refractory or insulting act of our own free choice !

And the *Daily Gazette*, the *Pioneer* and other Anglo-Indian papers have gone on better and omitted all reference to us in their report of these particular proceedings, as if we were not one of the undertrial prisoners in the case or had no right to make an oral statement like the others. It is this conspiracy of the Government and the Anglo-Indian Papers for the suppression of facts and/or the fabrication and propagation of falsehoods that naturally and inevitably lead to the prostitution of the Law Courts in the land in a manner that cannot be condemned too strongly. And thus it is, let us repeat, that, without even one word of evidence in the entire prosecution case to implicate us in any sort of complicity in the imaginary conspiracy relating to the army and without even taking our statement (oral or written) as required by the rules themselves, the Magistrate has committed us to the Sessions on several charges under Sections 131, 505, 120B, 109 and 117 I.P.C. !

And yet it was for the purpose of such an utterly baseless and bankrupt prosecution that our Vishwarpua Yatra ceremony was unceremoniously and sacriligiously broken in upon by the "Government" of Bombay with the "full concurrence," mind you, of the "Government" of India and we were bundled off hither from Dakore in such unseemly haste ! We were rotting here for 8 days before the magisterial enquiry actually commenced and some of our co-accused came here a day or two after us. And yet the "Government" could not afford to lose the few hours needed for the completion by us of that momentous ceremony, prescribed for all Dand-i-Sanyasis ! Should not religious toleration be extended even to those whom one is, politically or otherwise, sharply divided from ? Tippu Sultan of Mysore (whom our school histories have been vilely calumniating as a horrid persecutor of the Hindus) was indeed a devout Muslim but, as incontrovertibly demonstrated by the records still preserved in the Jagadguru Shankaracharya Math at Shringeri, where we lived for 6 years-he was an ardent admirer and fervent venerator of the then Shankaracharya of Shringeri and was instrumental in building tens of new Hindu Temples and endowing hundreds of old ones, which had fallen into decay (physical and financial) ! We are sure he never treated any Hindu, much less a Shankaracharya, in the churlishly cavalier and cantankerously intolerant manner, employed towards us by the Imperial and Provincial Governments and the District and City Magistrates whom this case has brought us into contact with ! It is not the indifference of the man who has really no religion influencing his every act, but the considered and deliberate toleration (*on principle*) of a devout believer

in and strict follower of one religion towards similarly devout believers in and strict followers of another religion, that alone deserves the name of toleration. Judged by this crucial test, a Tippu Sultan comes off infinitely better than the present British Government of India, notwithstanding Lord Reading's effusions about religious toleration !

Let us state it plainly, now and here, that even if we had ever any doubts about the absolute moral impossibility of co-operation with the present heartless, soulless and godless system of Government in India, our actual first-hand experiences of it, through the present case, must necessarily cure us, once for all, of all such doubts and make us a still more confirmed non-co-operator than we ever already were ! Can Lord Reading, with a clear conscience, honestly claim that, in the matter of that ceremony of ours at Dakore and particularly as regards the high-handed magisterial exclusion of our oral statement because our Religious rules precluded us from standing and addressing the Court, we can, *in actual practice*, trace out the least vestige of that Religious Toleration and Equal Justice which he has been so magniloquently parading before all and sundry ! And if so, we must ask him " what is Toleration " ? and " What is Justice " ? And, unlike jesting pilate, we shall wait for an answer ! Surely an ounce of practice is better than tons of theory !

It will be remembered that, like the Pilgrim Fathers who wended their way to the rock-bound coasts of America on board the Mayflower for enjoying the Religious Liberty which England denied to them during the time of that " wisest fool in Christendom " (King James VI of Scotland and I of England), the Parsis too came centuries ago into India for enjoying the Religious Liberty which their own motherland (Persia) denied to them and they found under King Yadav of Gujrat, not merely spiritual liberty but also such compassionate temporal patronage and loving material encouragement as to become one of the most flourishing Communities in India to day. And, year after year, they still pay their tribute of grateful praise to King Yadav therefor. What a grim irony of fate is this then whereby a Parsi becomes a tool in the hands of the British Government, forgets the debt that his race owes to the tolerant and benignant Hindu King Yadav of Western India and shows such intolerance towards the Apostolic Successor of King Yadav revered and beloved Gurn as the Ecclesiastic Head of Hinduism in Western India.

In fairness, however, to the City Magistrate and in extenuation—not, of course, in justification—of his ungentlemanly and intolerent conduct towards us, we must say that he too, like the District Magistrate, would seem to have weakly succumbed to official orders or the prejudice engendered by the afore-described calumnies circulated by the Bombay Government about our being an “ Imposter ” ! And that alone is a sufficient commentary on the ethics of the Government !

And we must, also, not omit to testify that the one cheering ray of light in all this dismal darkness is the consoling fact that, excepting one Abdul Karim of Madras and barring a few trifling and inconsequential white lies (seemingly due more to mechanical habit than to deliberate intention), the Police and other witnesses in the first, *i.e.* the pre-committal stage, told the Truth on the whole and did not (as we had originally inferred at Dakore) fabricate any evidence which would have been of real help to the Government in its God-forsaken mendacious campaign against us. And we may also add that, on this one promising foundation, we joyously base our sanguine hopes for India's Glorious Future.

VI. THE ORDER OF COMMITMENT.

It was a most wonderful order of commitment whereby the City Magistrate washed his hands of us and passed us on to the Sessions Court for trial.

In the very first paragraph we note that whereas the original complaint lodged against us by the Deputy Superintendent of Police, Karachi, (Exhibit A) mentions only 4 Sections, the Committing Magistrate begins his Committal Order with the statement that the *complaint* is under 5 Sections. We do not meddle with his right to add any number of Sections of his own, but we do demur to his misrepresenting the contents of the Exhibit in question.

The second thing to be noted is that, while translated extracts are given from the vernacular speeches of the others, we are only said to have *made a speech* (without any allusion to its contents), thus keeping up the Crown's conspiracy of silence on this point.

The third remarkable factor is a reference to the accuracy of the translations filed in the case.. Let it be remembered that, when Maulvi Hussain Ahmad Saheb (Accused No. 2 and the mover of the Resolution)

began the very first sentence of his oral (defence) statement in the Court, the Court translator (who is said to be one of the very best men available in all Sindh for translating Urdu into English) broke down utterly at the very outset and confessed himself hopelessly at sea and the proceedings came to an abrupt standstill in consequence thereof and that an Urdu translator has therefore been requisitioned from the Punjab High Court for the Sessions trial ! May we ask if the C. I. D. reporters at the Conference are alleged to have higher educational qualifications than the Government's own best translators and how are we to believe (1) that the poor fellows could have understood such Resolutions and speeches correctly and (2) that convictions based (as they always are) on such reports can be justly and morally upheld ?

The fourth astounding element is the magisterial series of statements (1) that all the other accused (*i.e.* No. 2 to 7 "either admit or do not deny") the allegations of the prosecution, (2) that they refused to answer the questions put to them, (3) that they wanted to give a statement similar to Mr. Mahomed Ali's and (4) that their statements were irrelevant ! Compare this unqualified statement with the Magistrate's own admission lower down that for religious reasons, *we* refused to answer him standing and he therefore refused to hear us and receive our statement ! This reminds us of an Irish case wherein the defendant who had been called upon to pay the price of a costly Chandlier which he had borrowed and broken, was told by his lawyers of three possible lines of defence (which he might get his witnesses to substantiate) and so, to make his case trebly strong, gave all the three statements together *i.e.* (1) "The Chandlier was broken when I borrowed it" (2) "It was whole when I returned it" and (3) "I never borrowed it at all."

As a matter of fact we repeatedly stated to Mr. Talati that he should at least record our statement, that we were not going to deliver a political or even a religious lecture and that we meant to confine ourselves rigorously to the evidence adduced by the prosecution witnesses, but that not an iota of evidence against us was on record for us to rebut. The local Indian papers reported this incident, but the Magistrate had dictatorially ruled us out of his Court altogether (except, of course, for the purpose of commitment) and did not record even that one statement ! Under such circumstances, the statement that we "either admitted or did not deny" this or that allegation, can only be compared to the claim that one who had been killed "either admitted or did not deny" some particular charge.

Fifthly, we wonder why we have been charged with conspiring between February and September 1921? The only evidence of "Conspiracy" adduced is the public resolution of 9th July 1921, and our speaking thereat. And so far as we can calculate, 9th July 1921 is even more accurately between 17th January 16,000 B. C. and 31st December 16,000 A. D. than it can be between February and September 1921. We may, however, dismiss the whole commitment proceedings with the pathetically manifest truth that Mr. Talati is a good but weak man who has either bent before the orders of his masters or yielded to the prejudices sedulously generated and fostered by them. We prefer to believe the former.

VII. THE POST-COMMITTAL ENQUIRY.

We now pass on to the Post-Committal Enquiry on the 21st and 22nd October 1921 by the City Magistrate whose chastened behaviour therein showed, at every step, that as Mr. Talati, he was a good man but as the City Magistrate, he had shewn himself too weak and plastic in the hands of the authorities above him and deserved more pity than condemnation at our hands. The only witness relating to our part of the case in this supplementary inquiry was one Basarmal who came in, at long last, to file as Exhibits his shorthand notes and his long hand transcript of our second speech in the Khilafat Conference here in July last. In this connection it is curious to note that this witness and one Topandas were both mentioned by name as prosecution witnesses in the very first complaint of Mr. Zaman Shah (the Deputy Superintendent of Police) and were again specifically named by him (in his opening evidence as the first witness on behalf of the Crown) as the persons who had taken notes of *our* speech but they were not at all called in during the entire enquiry. On 30-9-1921, *i.e.* after our committal, the Public Prosecutor had informed the Court is writing that both of them should be allowed to come in at the Sessions trial; but on 21-10-1921 the supplementary enquiry began, it was stated that only Basarmal was going to be examined. And when he was called, it was alleged that he had come without his notes and so had gone home to bring them "To-morrow"! When it was pointed out to the Court, on the next day, by ourselves and Maulana Mahomed Ali that the production and examination of this witness at this stage after the continued and deliberate omission thereof in all the earlier stages looked suspicious and needed explanation, Mr. Talati readily called upon Mr. Elphinston to explain. And the explanation that he gave was (1) that he had not

first thought this witness's evidence necessary and had dispensed with it and (2) that, in our statement (which the Magistrate had refused to record because we were seated) Mr. Elphinston had understood us to say that we had not spoken about the Army part of the resolution and so he felt it now necessary to put the speech in for the benefit of *ourselves and for the jurors* to draw such inference therefrom as they might ! Mr. Mahomed Ali wanted to know if the keeping back of this witness and this most important Exhibit was because the Government had desired to convert us, detach us from the others and let us off and therefore in the meantime did not produce any evidence against us except the superficial one about our having attended and spoken ?... As such tactics have actually been attempted with regard to Pir Saheb (Accused No. 4) and as his speech too (although admittedly and forcibly about the army) was not filed and has still not been filed as an Exhibit, there is reasonable ground for suspecting that the same consideration (*i e.* the hope of being able to win us over) was responsible for the original non-filing of our speech as an Exhibit ! Add to this the fact that, *after our committal*, Mr. Girdharilal of Amritsar had made it clear to the District Magistrate of Karachi that, in the performance of our Dharma, we had actually braved and confronted and not been cowed down even by the display of bayonets and firearms against us at Amritsar and were therefore incapable of being converted by the fear of a comparatively petty trifle like imprisonment of either sort or even transportation ! This strengthens the suspicion that Mr. Mahomed Ali gave expression to and may be held to explain why his evidence was deemed necessary *after our committal* and after the final renunciation of all hopes of an apology or even a retraction from us !

But there is this great and tremendous difference between our case and Pir Saheb's, *i.e.* that while he had spoken strongly on the army question and he even now justifies it from the Quran, we had not even known about that subject and had said nothing about it and had no need to say aught in our defence statement about the army (unless, indeed, we now voluntarily choose to do so for our own satisfaction and pleasure). We therefore feel it necessary to look for some more plausible explanation. And like the plain blunt person that we are and ought to be, we should put it to the court that, leaving out of account the preliminary incubatory period of triangular correspondence (between Simla, Bombay and Karachi) and counting only from the 8th of September (the date of the complaint and the warrants) the prosecution would seem to have been

nursing and cajoling and threatening and otherwise striving to persuade poor Basarmal and Topandas (the only English reporters in the case) for over 45 days to concoct false evidence against us and to have failed therein. On any other hypothesis we are unable to understand the prosecution's omission even to produce these witnesses. But the Crown Prosecutor had apparently consoled himself with the expectation that, as a militant non-co-operator and like Mr. Shaukat Ali, we would justify the Resolution on the Army question on political grounds and convict ourselves out of our own mouth thereby. And so he seems to have spoken the truth in saying he had first thought it "unnecessary" to produce these men and file our speech. Why was it necessary, may we ask, to produce others' speeches and not ours? But when we actually began our statement in the Lower Court with the declaration that we were not going to deliver any political or other harangue and would rigorously confine ourselves to the evidence adduced but regretted that not a word of evidence had been let in against us which we could base a cross-examination on or need defend ourselves against, the shock of the disappointment must have been tremendous indeed. But the Magistrate came unexpectedly—and we hope unconsciously—to the Crown's rescue in that horrid predicament by refusing to record our evidence for the reason already dilated on? And the Counsel quietly took advantage of it by passing us over lightly in his argument which, be it noted, was *after* we began our statement and were prohibited by the Magistrate. If the Crown had really meant, as now claimed, to file our speech for our advantage before the Jurors, it should have done so at the very outset. Or, if Mr. Elphinston had been honestly ignorant of our honest ignorance of the details of the original (Conference) proceedings, he should at least in his arguments, have considered our clear contention about it and referred to it and corroborated it with our speech and not taken mean advantage of the Magistrate's refusal to hear us and record our statement! As a matter of fact, however, we had *not* really denied before the Magistrate that no evidence against us had been produced for us to rebut when he stopped us. It is therefore plain that Mr. Elphinston's present explanation does not really record his impression of what we stated, but only revealed what he had himself known all the time but had not been candid enough so long to admit. As we had not actually said it, his impression cannot have been due to our words and must certainly have arisen from some other cause. And what cause could be more natural than his own inner consciousness of the truth?

And when at last it is decided to file our speech, the procedure still continues to be unnaturally erratic ! Only one of the two witnesses is called and he too " forgets " to bring his all important notes of our speech ! Imagine " Hamlet " being staged and Hamlet alone of the " Dramatis Personæ " being forgotten or a marriage taking place with the bride and the bridegroom alone absent ! Under these circumstances, we find it impossible to resist the conclusion that an unwilling witness is long pressed to give false evidence, struggles hard against it to the last and finally triumphs ! For, though his report is woefully incorrect and muddles up the Puranas and the Gita and replaces Hengist and Hersa by one Robert and so on and therefore utterly valueless as an instructive or even coherent epitome of our speech, it is obvious that the errors arose from a weak memory and from sheer ignorance of the Hindu Scriptures on the one and the History of England on the other and not from any malicious incline or fabricative genius at all ! Any intelligent person who reads it along side of the newspaper reports of our speech and the first part of this statement (which we had prepared within two days of our arrival here, *i.e.* on the 20th September, when we had not yet heard from our local friends about the army part of the Resolutions) can easily see that it is peculiarly jumbled up and inaccurate but honest report. We have therefore once again to offer our hearty congratulations to the police witnesses (except Abdul Karim of Madras) for their having clung on the whole, to the truth !

Now, as this report too corroborates our contention that we never spoke about the Army, it is an interesting speculation why the Crown had filed at all, why (in this instance alone) the shorthand notes too have been put in, whether it is really (as claimed by Mr. Elphinston) for our benefit before the jury or really for showing that, although we did not speak about the Army, our strong condemnation of Mr. Lloyd George's acrobatics with regard to the Khilafat should turn the jurors against us and so on. As, however, this is an idle and aimless speculation, we do not care to go thereinto but would and need only point out that in case the last conjecture is correct, it might be open to the police to indict on some other charge (say, Seditious preaching) but it would certainly not be within the authority of the Court to convict us under sections 131, 505, 120 A and so forth !

VIII.—THE SESSIONS TRIAL.

We need to say—only a few words about the Trial in this Sessions Court. We were astounded to see the proceedings opening with drastic alteration of the charges framed by the City Magistrate and an addition

thereto all calculated to enhance the gravity of the offence and of the punishment (in case of a conviction). We do not, of course, contest the Court's powers to do this under Section 227 of the Criminal Procedure Code, but we do contend that the charges were all terribly prejudicial to us, that there was not a scrape of evidence before the Committing Magistrate in support of these charges, that this was merely a camouflage of the prosecution to produce (under section 231 C. P. C.) new witnesses who had not been produced in the Lower Court (whether *before* or *after* committal), that even after taking advantage of Section 219, C.P.C. for a post committal magisterial examination of supplementary witnesses the prosecution had failed to adduce any evidence in support of these amendments and was adopting this "cute" but mean trick for getting illegally admitted lots of inadmissible new evidence and that under such circumstances, the adding and amending of the charge under 227 C. P. C. and proceeding immediately with the trial under 228 C. P. C. are, in the words of the great commentator Sohini, *ultra vires* and are not merely errors of procedure but an improper assumption of jurisdiction. There are lots of recorded cases supporting this contention, *i.e.*, 6 Calcutta Weekly Notes 73; 1899 Allahabad Weekly Notes 39; 31 Bombay 218; 5 Allahabad 233; 29 Calcutta 415; 6 Bombay High Court Reports of Crown cases 76 and 3 Madras 351. And of these, 3 Madras 351 is on all fours with the present case and ought to have been followed here. It is distinctly laid down under 228 C. P. C. that a Court of Sessions cannot take cognisance of such charges without commitment thereupon. The object of this restriction is to secure, in the case of persons charged with a grave offence, a preliminary inquiry which would afford them the opportunity of becoming acquainted with the circumstances of the offence imputed to them and enable them to make their defence properly. And, similarly, where the alterations in or additions to the original charges would raise different questions of law or would submit of a different defence on the facts, the Court should always act under section 229 C. P. C. suspend or postpone the trial and give the Committing Magistrate an opportunity to make a further inquiry.

And especially with regard to the changing of February 1921 to February 1920, it must be stated that the report of Mr. Surendra Nath Sen of the Assam C. I. D. about Maulana Shaukat Ali's speech of 6th March 1920 at Karimganj (which the Public Prosecutor sought to put in at the post-committal magisterial inquiry of so late a date as 22nd October 1921, but which the Magistrate refused to admit as evidence

and of which, therefore, Mr. Elphinston gave us copies privately "as a matter of courtesy" as he pretended)—this precious report has been further supplemented on the opening day of the Sessions Trial (*i.e.* 24th October) with a reference to some Calcutta Town Hall resolutions of 29th February 1920 and is the basis for the alteration of February 1921 to February 1920. Surely, it is a revoltingly horrid and shamelessly unrighteous lie to say that this change is one which is justified *on the facts already before* the Magistrate. The expression "*on the same facts*" in this Chapter of the Criminal Procedure Code is most important but has been quietly thrown overboard by the prosecution. The charges therefore, are wholly illegal.

And particularly in a conspiracy case wherein it is sought to catch, in a wide net, all sorts of persons who may not have known anything of such facts or even one another (as Mr. Elphinston argued in his opening speech), it is particularly laid down that such changes are absolutely *ultra vires* and without jurisdiction, (without a retrial) !

In *our* case the prosecution has adduced abso'utely no evidence to show any sort of connection between us and any conspiracy relating to the Army. The only evidence before the Court in respect of us is that we attended and spoke at the Khilafat Conference sitting of 9th July last at Karachi ; but even the report of our speech there (as filed by the prosecution itself) does not contain even one word about the British Army !

Nor has the prosecution let in any documentary or even oral evidence to show that we are even an *ordinary* member of the Central Khilafat Committee or any of its District, Taluka, Village units or even of the Subjects Committee or that we were ever anything more than an honoured guest and patron giving our blessings to Hindu Muslim unity and the Khilafat cause. And yet the prosecution has sought to involve us too in the meshes of its wide net. We contend therefore that the alterations are *ultra vires* with regard to all the accused in general and with respect to us in particular.

In passing we would like to mention that the Jury too seems to have been empanelled in a manner not permitted by Law. We refer to the fact that amongst the persons called for the purpose, there were some Goan gentlemen who are not British Indian subjects and, amongst the five actually selected, we believe there is one such gentleman. It

is no *mora*! answer to this to say that we did not challenge his selection. That would be like meeting a charge of adultery with the plea that the woman had consented or had been asleep or unconscious ; or a charge of theft with the plea that the house had been carelessly left open. We wish to make it clear that we have absolutely no objection on any score whatsoever to Goan people as such and we do not ourselves believe in the sacrosanctity of the rule restricting the Jury to British Indian subjects alone, nay, we positively feel the utmost cordiality towards our Goan friends, particularly if they are devout and God-fearing Roman Catholic Christians as we understand them to be. Our only object in alluding to this fact is to illustrate and demonstrate how difficult, nay impossible, it is to get our British Indian Courts of Law to observe their own rules and to voluntarily administer justice unless and until—either by our challenging of their actions and procedure or owing to considerations of policy and diplomacy of the usual devious character—they are helplessly *compelled* to do so by some process akin to a surgical operation. In fairness, however, to the Judicial Commissioner we feel it our duty to record the fact that when he clearly understood our *religious* position and the rules of our order of Sanyas precluding our standing before him, he specifically exempted us therefrom and that we ourselves voluntarily elected to abandon our chair and sit down with our co-accused.

Passing on to the Crown Prosecutor's argument in this Court, we have to say in the first place, as regards the logic of it generally in trying to establish the fact of a conspiracy that we never heard a more illogical kind of logic than that. The whole logic of it pushed to its logical consequences would result in the *reductio ad absurdum* that all who belonged to the Central Khilafat Committee or any of its branches, all who ever associated with poor Mahomed Ali (without the honorific "Maulana" or even the gentlemanly Mr.) all who attended a single Khilafat Conference during all the centuries (past, present and future) and including the Police and other reporters there) all who were in the Subjects Committee of any such Conference and even all who arrived by the unfortunate Quetta Mail on a certain fateful day in July 1921 at poor Karachi—and many other kinds of people whom we have neither the time nor the inclination, nor even the power to describe in detail, were *ipso facto* conspirators under 120-A and culprits under 131, 505 and the rest of the family. As it is impossible to go in detail into all these ridiculous absurdities, we will consider only one of them, *i.e.* the Subjects Committee. Is the Crown unaware that resolutions are passed at the Subjects Committee after a lot of discussion and the final shape arrived at is generally very different

from *every one* of the proposals made therein and can only be described as the Mathematical Result out of innumerable Forces? And *no one* is individually responsible therefor while *every one* is bound to abide thereby. And even the President (unlike our Viceroy, Governors and even petty Magistrates) has no vote and must necessarily—as President—introduce before the meeting and put to the vote every resolution (even those which he may personally be opposed to). It is therefore (morally as well as legally) unrighteous and illogical to foist the blame on any one, unless—by independent proof and evidence—it could be shown that he had pressed for it in that identical shape and voted for it in the Subjects Committee. It would be absurd to argue that when a majority carry a proposition that one does not like, one should resign immediately. That would mean the immediate disruption of all Parliaments, Cabinets, Legislative Councils and even Executive Councils and so on. So the prosecution should have proved who in the Subjects Committee pressed for the Resolution in question in the identical form which it ultimately took and then prosecuted *them*. In reality we find Crown in the desperate predicament that it had no evidence to show who attended the Subject Committee except that Maulana Shaukat Ali's voice was heard somewhere in that part of the country or the world and that the voice was recognised as his, because, mind you, he was fat. Surely this is an achievement which great modern scientists engaged in the fields of Acoustics will envy our Karachi policemen for; but this is no evidence according to any Evidence Act on Earth (Except perhaps that of the French Resolution wherein a person who was suspected, to be suspected, to have been suspected (raised to the N power, (being perfectly indeterminate) was immediately guillotined without any further evidence). And if it be argued the gentlemen admit their approval of or sympathy with the resolution, even then we have to say that even a confession is no evidence without independent corroborative testimony. And besides, the expression of sympathy with or approval of any opinion—however anarchical—is not indictable under any section of the Indian Penal Code. It is not opinions, for which prosecutions stand. And so long as the acts are not proved, the detached and abstract opinions have no legal value.

Owing to the Crown Counsel's logic about our special and individual part in the alleged conspiracy, we must say that it was the most vicious example in our experience of the vicious practice of arguing in a vicious circle and begging the whole question at issue. We have already exposed the utter bankruptcy of the prosecution in the matter of actual positive, relevant evidence with regard to us individually,

the consequent stabbing of us from behind with libellous communiques and circulars, the non-filing of any speech of our to start with because there was nothing in it to connect us with the army question and the police witnesses refused to lie and perjure themselves, and the final desperate filing of the available report with a view to make the best of a bad bargain. It was this terrible lack of facts which, in our case particularly, drove the counsel to admit in desperation that presumption was such and such. We quite agree not merely that it was a presumption, but that it was the very height of presumption to presume things and to ask the jury to presume things for which not a scrap of evidence was forthcoming. And how was our knowledge of and participation in the alleged conspiracy proved? By our sympathy with the Khilafat cause! And how was that proved? By our knowledge of and participating in the conspiracy !! What else is this, gentlemen, but argument in a vicious circle?

Mr. Elphinston had the presumption to cast libellous aspersions on our veracity, not on the strength of any facts he had proved or evidence he had adduced but his presumption that we *must have read* particular newspapers (if not also C.I.D. reports) which he was going to file three months later in a false case against us. Let us inform Mr. Elphinston that, until the Government (whose business it is to tackle the problem of unemployment) actually threw us *out* of employment on the 16th September last by arresting us, we had normally very little time for reading newspapers and particularly to waste time on the reading of our own speeches. With our prayers, our elaborate Poojahs (worship) our regular classes for our pupils (in Sanscrit Literature, Logic, Astronomy, Philosophy, etc.) our incessant public lecturing work, our correspondence (which we write with our own hand and which as our records attached by the Government can prove works out at daily average of about fifty letters which are more of the nature of lectures and dissertations than letters) and our work of answering the questions of pilgrim visitors and worshippers at our shrine and other inquirers we are fully occupied from 3 a.m. to 10 p.m. and then we read our newspapers between 10 and 11 p.m. seeing only the telegrams, the leading articles and important fresh material. Even this we do with the utmost difficulty, because we are completely done up long before that hour, and when during conference times, we are called upon to sit continually for hours in the Pandal and especially when there are night sittings, we find that they are urgent letters to be got through at midnight and, jaded as we are, we have not the physical

capacity (even if we had the wish) to prefer the "Daily Gazette" of Karachi to "sleep gentle sleep, Nature's soft nurse." It must be remembered that, as the Jagadguru Shankaracharya we are continually called upon by inquirers (in person and by post) to answer an infinite and multifarious series of questions relating to Ceremonial matters of faith (like prayers, worship, marriages, funerals, oblations to the sacrificial or the house-hold fire, etc.) political matters (like co-operation, non-co-operation, etc.) social matters (like Basu's inter-race marriage Bill; Patel's inter-caste marriage Bill; Gour's marriage Bill; the Depressed classes Problem, etc.) and so on. And we have to answer all such questions, remove all such doubts and difficulties and cannot—like the Commercial West or even Mr Ross Alston, or Mr. Elphinston—say that we do not receive Rs.3,000 per day or per month and cannot do all this work. It is our duty and we have to and do perform it as such. Having therefore very little time for and great difficulty in, keeping ourselves in touch with the progress of the world in the shape of fresh news, we certainly do not normally find it possible to read stale news in the shape of our speeches. And even granting that we could have read local papers and if it should have been the "Sind Observer" we would have according to the prosecution evidence itself—got no information on these matters. As a matter of fact, however, we read no local papers as we had not the time to do so. And on a matter of actual fact like this, it must be obvious to any unprejudiced person that *our* simple statement of facts should have a million times more moral and even legal value than the presumptions and most heinous aspersions and illogical inferences of persons whose very presumptions are paid for at the rate of thousands or at least hundreds per day.

The most offensive and atrociously false part of the Crown Counsel's argument was the imputation that we were trying to get out of the consequences of our action by denying knowledge of the army part of the Resolution! We wonder what right Mr. Elphinston (who never saw, knew or heard about us until we came into the relationship of Public Prosecutor and Public prosecuted) has, to say aught about our courage or cowardice! It is just because we do not care for or fear what the police may report of our speeches, that we read fresh news of the world and do not worry about reports of our own past speeches! And besides, the very speech filed by the prosecution and made so much of by the Counsel, will show how we wanted all the 330 millions in India to go, if necessary, into Jail for the sake of Dharma until, at last, the jails could not contain them! And yet we are accused of cowardice! If, how-

ever, he is inclined to think that, that was merely tall talk and bravado; we will make a present to him of the fact that when, in April last, the Sikhs of the Punjab invited us to Amritsar to arbitrate on a purely religious controversy between themselves and the Sanatanee Hindus, and the Deputy Commissioner and the D.S.P. issued orders prohibiting our speech on "Dharma" under the Seditious Meetings Act (X of 1911), we refused to admit the authority of any temporal Government to gag us in the performance of our Ecclesiastical duty and drove a coac hand pair through their orders, and when the D.S.P. with his Deputy and two Assistant S.P.'s, posted themselves with about 25 armed mounted men with fire-arms and bayonets, within 60 yards of our quarters, to prevent our proceeding to the meeting, we drove straight on, braving all their murderous military display ! And then the D.S.P., etc., bit their lips but they durst not lay violent hands on us as threatened. How ignorant must Mr. Elphinston be of our character and our frame of mind to say that we who braved and confronted fire-arms would be afraid of his prosecuting and clapping us into jail. From this Amritsar incident, he may perchance think us even more dangerous and dare-devil than he had originally deemed us to be, but we hope that it will at any rate cure him of his hallucination about our insincerity, timidity and desire to escape the consequences of our speech ! Let him learn now at least that like the Highland Chief Roderick Dhu (in Sir Walter Scott's *Lady of the Lake*), we can only say:—

" Thy threats, thy mercy, we defy,

Let recreant yield who fears to die."

Why then did we say that we had not known, until our arrival at Karachi jail about the army part of the Resolution ? Solely because it was the fact and we could not—even for the sake of bravado or popular applause—pretend to have known what we had really not known.

The fact is, as the prosecution evidence itself has shown, we went to the Subjects Committee's sitting at 11 a.m., *i.e.*, just when (according to the prosecution evidence) it was breaking up. We attended part of the day's session and left at 2 p.m., to re-attend the night sitting at 11 p.m., thus obviously having been absent in the evening session too of the Subjects Committee. And when we did come to the Pandal, Dr. Kitchlew was on his feet. We asked him what the next speaker was speaking about and he said the subject was "Angora" and so we spoke on the Angora Government after an introduction about Hindu-

Muslim Unity and the Khilafat, as our speech will clearly show. And this does not mean that Dr. Kitchlew "vilely deceived" us (as the Crown Counsel suggested). It is usual to describe long Resolutions with such short headings as Swaraj, Non-Co-operation, Angora, etc., resolutions and Dr. Kitchlew followed the usual and natural practice. And besides Dr. Kitchlew could not have any desire to cheat us, because he did evidently more than Justice to the Government and we now find that the Government (which is capable of prosecuting people for their religious faith) did not deserve it ! Going from the external to the internal evidence it is clear that our speech itself proves our absolute ignorance of the army question being on the *tapis*. It will be noted that, of the three parts of the resolution, we said nothing about the first part, *i.e.*, Kemalist Victories or the second, *i.e.* Army but only about the third, *i.e.*, Angora. If we had known the existence of the other two parts, our whole speech about the Purans and Adi Shankaracharya, etc., was wholly irrelevant to the Resolution on hand. This very irrelevancy is the clearest possible proof of our ignorance of the first two parts.

The Crown Counsel aid all imaginable emphasis—having nothing else to go upon—on our being a political agitator and a sympathiser with the Khilafat. May we say that, in the matter of our sympathy with the Khilafat, we are conspirators with Mr. Montagu and the Government of India (including Lord Chelmsford and Reading) and that, as regards our being a political agitator in the memorandum (just published by Lord Reading) even Lord Chelmsford (who, as even the Anglo-Indian "Times of India" admitted, left India unhonoured, unwept and unsung) plainly said : " India sincerely wishes to remain within the empire but only on terms of equal partnership. Her own self-respect requires it that she shall not be in a position of inferiority" and that therefore Lord Chelmsford is our co-conspirator in our political agitation about Swaraj and Republic and so on.

Finally, we would point out that, apart from the external and internal evidence, there is one unanswerable reason why we *could not have* known about the Army question at the time of the Conference. And that is that, whereas the Islamic Law was explained by Hazrat Maulana Bari and other Ulema who would seem to have clear cut answer on Muslim sepoys in the Army, Hindu religious law (as we shall show presently) is intensely complicated on the question of Hindu sepoys in the Army and we could not give an answer off-hand ! Mr Gandhi may consider these

questions from the stand-point of politics—cum—Religion generally, but we have to give our interpretation of the Hindu scripture from the spiritual standpoint alone ! As John Stuart Mill says : “ 999 persons have no more right to coerce one person than one man has, even if he had the power to coerce 999.” And therefore our position is that, unlike the Crown Counsel's who are heavily paid for their presumptions, we could not have the presumption to uphold or condemn the deliberate opinion of the Ulema on a matter of Islamic Law but should frankly have stated that we were ignorant of Islamic Law and should merely have asked Muslim to be faithful to Islamic Law just as we would have wished and asked Hindus to obey the behests of Hindu Law. And even to please our Islamic friends on the one side or to oblige Mr. Elphinston on the other, we could not have taken any other course. We need add no more on this point of fact, notwithstanding all the presumptions of the prosecution.

IX. THE ARMY QUESTION.

(FROM THE HINDU SPIRITUAL STANDPOINT.)

Apart, however, from the fact that we never spoke or even knew in July last at Karachi about the Army question and that, far from our having participated in any conspiracy, we have really, on the other hand, been the victim of a huge Government Conspiracy against us and our Peeth and, although the Army question has no direct bearing on our part of case, we still feel it our duty to go briefly into this question too (of Muslim Sepoys) on its own intrinsic merits, as usual, from our own characteristic spiritual standpoint. But, before doing so, we would just point out that section 7 (2) of the English Army Act 1881, 44 and 45 Vic. C58 applicable to India under Sections 131 and 505 I.P.C. and the similar English Enactment 37 George III C. 70 as amended by 7 Will. IV and 1 Vic. C 91 clearly defines the “Seduction of a soldier from his Allegiance or Duty” as *an act amounting to treason*—and definitely, expressly and categorically, excludes therefrom “Even insubordination and disobedience, howmuchsoever flagrant” (*vide Pindidads* 1907 Punjab Weekly Reporter Cr. 37) and, secondly, that, according to the terms of the Exception Clause of Section 505 itself if a report be circulated in the belief that it is true and without intent to incite mutiny, sedition or disturbance of the public tranquility but only with the object of advising a friend for his own betterment or of cautioning a co-religionist (or a body of co-religionists) against incurring religious impurity or sin, then the accused is exempt *irrespective of the consequences*, *Vide* Dr. Gour's Edition of the

I.P.C. pages 735 and 2432 and *Gazette of India* 1898 (Part. VI), P.38). And, consequently, it is obvious that a straightforward Resolution of the openly and admittedly *Religious* character in question and with the *Religious* motive described is evidently *not* within the purview of actionability under these enactments at all ! And besides, no one has asked the sepoys *to continue in the Army and there mutiny or fail from allegiance or duty* ! And, calling upon them to leave the Army in favour of a secularly more paying or religiously less impure profession is manifestly not indictable under section 131 or 505 I. P. C.—nay, is positively exempted as just afore-explained, by the Exception Clause of Section 505 I. P. C. ! This, however, only in passing.

Turning now to the intrinsic merits from the purely Spiritual standpoint, we have already stated our conviction clearly that God-made Law and Man-made law must, as far as possible, be harmonised; but, if a radical, diametrical, fundamental and irreconcilable antagonism arises between the two, *it is the man-made law that must necessarily go under*. In the clinching words of Antigone to the Tyrant Ceon of Thebes (in Sophocles' tragedy of Antigone).

"Nor do I deem

Your Ordinance of so much binding force

As that a mortal man could over-bear

The unchangeable all-binding Code of Heaven.

This is not of to-day and yesterday

But lives for ever, having origin

Whence no man knows : whose Sanctions I were loathe

In Heaven's sight to provoke, fearing the will

Of *any* man."

This is why, in the light of further and further study and experience, the Man-made law of the realm is and must be changed from time to time, whereas the basic principles of Religion—*i. e.* Truth and Justice—can never be discarded or even diluted but, like His Mercy (as Sung by the Hebrew Psalmist "endureth) for ever" !

Passing on from the Pagan or classical Greek literature to the Hebrew Scriptures, we must first note that the Mosaic Pentateuch (*i. e.* the Books of Genesis, Exodus, Leviticus, Numbers and Deuteronomy) clearly enjoin that Kings too are bound by the Divine Law and prescribe, with con-

siderable wealth of detail, the "Sin offerings" and "trespass offerings" they should offer in expiation of their sins and trespasses against the Mosaic Covenant. Rightly, therefore, says Mr. Paul Scott Frower, in the course of an article in the "Atlantic Monthly" that "the Jews, through innumerable transmutations of time and place, have not only kept their identity as a people, but have opposed a vigorous, if passive resistance to most attempts at assimilation" and that "the sturdy Monotheism of Israel teaching that men shall obey Jehovah alone, carries by implication the idea that all *merely human* authority [*i.e.*, not having its sanction in or conflicting with Jehovah's] is unjustified and therefore negligible." And, finally, we observe that the very fact that an endless galaxy of kings like Saul, David, Jeroboam, Zedekiah, etc., in Judah and Israel, was severely rebuked and even thundered at and against by a fearless succession of noble Prophets and Seers like Samuel, Nathan, Amos, Jeremiah, etc., did or did not pay heed thereto and was consequently saved or swept off and annihilated, is the clearest possible proof that, according to Hebrew theology too, the law of the King of Kings is above that of His petty creatures drest in a little brief authority and intoxicated thereby.

As for the New Testament Dispensation, we learn from the Gospel of St. Luke (III.14) that John the Baptist too preached this simple Truth that even soldiers are within the jurisdiction of the rules of ethics and we also know how he was unjustly incarcerated and beheaded for preaching Dharma to the incest-loving Herod. And then we have the central and cardinal fact of the New Testament, *i.e.*, that, although the Lord Jesus Christ was by no means an anarchist and asked men to render to God and to Caesar what belonged to them respectively, yet His whole life was one continued plea and martyrdom for the placing of God's Law above man's! And it is, therefore, no wonder that the Apostles St. Paul, St. Peter, St. James, St. Stephen, etc., follow the same path and teach us the same lesson as their Master Himself had done before them. Hence do we feel that the King-Emperor (who, by a huge legal fiction, is the "complainant" in the present case against us), even if he did not care for Queen Victoria's explanation of her title "Defender of the Faith" as *Protectress of Religion generally* and even if he did not accept the doctrines of other faiths about the supremacy of God's Law over man's law, should—as a Protestant Christian and as the Defender of that Faith at least—accept the actual teaching and example of Christ and His Apostles as authoritative on the matter, in which case there can be no doubt as to the ultimate verdict hereon.

Apart, too, from the tenets of Religion as such altogether, we would point out that, even according to modern Civil and Criminal Jurisprudence as enunciated by the greatest Jurists of the western world to-day, a soldier is not only under the Military Law laid down by Tennyson :

“Theirs not to reason why,
Theirs but to do and die.”

but also under the laws of Ethics and Religion. How else shall we account for the Allies (including England) insisting on and bringing about the trials of so many German and other War “criminals” on charges of inhumanity, etc. ? If the men had no moral option but to obey the orders—however atrociously immoral or sacrilegiously irreligious—of the Kaiser and other “superior” officers, how could they be hauled up as “Criminals” for obeying such orders ? Surely we cannot blow both hot and cold with the same breath ! And this clearly shows that, apart altogether from Religion as such, even the ultra-rationalistic modern conception of life postulates a conscience-clause even for soldiers. Or, in other words, Morality and Religion are above Man-made law.

But, as regards the Government of India, our initial difficulty is that this body often shows itself *too* “superior” to Christianity and even Rationalism and all such “d.....d nonsense” ! We notice, however, that a Bill which Dr. Gour of Nagpur recently sought to introduce (for the registration of all adoptions) was stoutly opposed by Dr. Tej Bahadur Sapru on behalf of the Government on the ground that the Bill went against Hindu Law and therefore could not be countenanced even to the extent of being circulated for consideration and criticism ! Apart from the intrinsic merits of that Bill and whether it was really acceptable or repugnant to Hindu Religious principles, we must candidly express our whole-hearted approval of the copy-book—maxim—like principle and policy so prettily enunciated by Dr. Sapru, *i.e.*, that nothing obnoxious to the Hindu or other Religions should be enacted in the Indian Legislatures for the Hindus and others respectively.

And this root-principle should apply not merely to new Bills but even to existing Acts. If and when, at any time, any existing Act is found to offend against the principles of Religion generally, it ought to be withdrawn altogether ; and if it is offensive to a particular sect only, such a community at least ought to be categorically exempted from the sphere

of its operations. This is the only moral course open to Governments and Legislatures that really believe, with King Solomon (Proverbs XIV. 34), that "Righteousness alone exalteth a nation."

As for Hinduism and the Sepoys, we must frankly admit that the position is intensely complicated and, *pace* Mr. Gandhi, no mechanical ruling can be given. The conflicting cases of Shri Bhishma, Vibhishan, Prahlad, Akrura, etc.,—all of them splendid specimen of godly humanity—make the problem still more knotty and naughty. And the final conclusion from the Hindu standpoint must needs be very intricate and puzzling and even impossible to deduce without a detailed and careful study of each Adhikari's case on its own individual and intrinsic merits. As this problem, however, is not actually before us, for our emergent consideration at present, we do not go into it any further just now.

The case of the Sikhs seems very simple. We need only allude to the striking incident in the life of Shri Guru Govind Sing (the last of the Gurus, after whom the Granth Saheb is alone the Guru of the Sikhs) wherein, on one occasion, just in order to test the steadfastness of his disciples to their Dharma, the great Guru (while riding out with a number of them) merely set his bow and arrow in position as if he were intending to aim an arrow at the Samadhi (place of burial) of a Saint, was sternly called upon by the disciples to dismount immediately and explain his atrociously sacrilegious conduct, quietly applauded their fearless and impartial adhesion to Dharma, volunteered to be tried for his offence (according to the Panth rules and like the commonest of common people) by the communal Panch, was fined Rs. 100 for the small offence of merely feigning to aim against a Samadhi, paid the fine cheerfully and rejoiced indescribably that his spiritual labours with them had not gone in vain! The Sikh therefore has to place his Dharma relentlessly above even his Dharma Guru, let alone pettier fry (like temporal rulers), as even Ranjitsing the Lion-Hearted King realised through bitter personal experience!

As regards the Muslim law, however, the present prosecutions have themselves widely proclaimed and advertised to the world the fact (which we ourselves did not know until a few days ago here and which even Prof. Vaswani of Karachi says he knew nothing of until quite recently) *i.e.* that a huge assembly of *Ulema* (including Hazrat Maulana Abdul Bari Saheb of Lucknow whom we saw for the first time at Karachi in July but whom we had frequently heard of from many and diverse quarters as one of the greatest living authorities on the Islamic Scriptures) has

actually declared that, under the present plight of the Khilafat, it is "Haram" for a Muslim to be in the Army. We do not know the exact technical signification of "Haram" but we roughly guess it to mean "forbidden by Religion." We know not personally if this decision is correct; but we who always insist that a Hindu shall invariably act in conformity with the Hindu Law and who further believe in Swa-Dharma for all, must certainly and unequivocally declare ourselves similarly in favour of all Muslims unquestioningly following the Muslim Law of Allah in preference to the Man-made law of no body in particular !

Apropos of the recently published new edition of Sales' translation of the Qoran, the London "Times Literary Supplement" says of the Qoran "Every Mahomedan must learn by heart some portion of it at least, for recital in the daily prayers; and thus, five times a day, it passes on the lips of men in every land of Asia and Africa, from Peking to the shores of the Atlantic—from Wilna and Tobolsk to Cape Town and Buenos Aires. Its claim on the allegiance of the Believer is as far-reaching as its geographical extension. Co-eternal with God Himself, it demands absolute obedience to its injunctions in every department of human thought and activity, not only in respect of Dogma and Religious belief and practice, but equally so in the realm of *law, political theory* and such details of *civil and domestic administration* as taxation, inheritance and the control of refractory wives" and so on. These are the words, not of an Indian (or Kemalist) Nationalist, Damagogue, Firebrand, or Stump-Orator, but of the sober literary reviewer on the Editorial staff of the London "Times," who thus most eloquently testifies to the indubitable supremacy of the Qoran as the highest Court of Appeal in *all* the affairs—spiritual as well as temporal—of *all* Muslims !

If, however, the correctness of the view adumbrated at the Khilafat Conferences of Gokak and Karachi be reasonably, conscientiously and *responsibly* doubted by anybody, the question will then have to be decided on the common sense principle laid down in our Taittiriyaopanishad i.e. by an assembly of eminently learned, thoroughly devout, rigorously straightforward and entirely dependable Muslim divines (without any artificial manipulations—like Col. Pride's Purge or Lord Ronaldshay's recent so-called "Public" meeting at Calcutta—for mechanically predetermining and automatically ensuring any desired political hue for the assembly).

We personally have not studied the Qoran and other Islamic Scriptures sufficiently to venture to give any opinion on the matter ourselves (as we might freely venture to do in the case of the Bible) and we always—*on principle*—refuse to dogmatise, one way or another, on a question which we have not ourselves thoroughly studied. Nor can we grant, even for a moment, the utterly and revoltingly preposterous proposition that the Karachi Police, Magistracy or Judiciary or the Bombay Government or even the *Omniscient* Sir William Vincent (with the worthy Dr. Sapru) can decide such intricate and delicate problems of Islamic theological Law. That would be no less ludicrous than the judgment and discrimination of a person who, needing to be treated for nephritis, pulmonary consumption or double pneumonia, selects as his doctor one who knows nothing of Anatomy, Physiology, Hygiene, Pathology, Therapeutics, etc., but happens to be the tallest, the stoutest, wealthiest or the handsomest individual in that vicinity! Even as perplexing points of medicine, Hindu Law, etc., are invariably referred to the experts who have specialised in those particular branches of Science or departments of Learning, so too should this point have been referred to the specialists therein.

But what do we actually find? We find that, instead of adopting this only ethical, sensible and statesmanlike procedure, the Government—with its pathetically crass faith in Repression (with a big R) all-round (however unjust and impolitic) as its one and only remedy for all the ills of Indian life—is prosecuting and persecuting all sorts of people and procuring for them the benefits of cheap fame and martyrdom which we at any rate, do not honestly feel we have at all, in this case, deserved? And besides whereas even the Nagpur Congress Resolutions are specified as the Swaraj, Non-Co-operation or other Resolution, this Resolution is now famous all over India as the “Karachi Resolution!” The Conference had failed to send its message far and wide; and even we and Prof. Vaswani and millions of others had never heard of it; but the Government (by these prosecutions) has acted as the *Propagandist Agent* of the Khilafat Conference and carried to the whole world the Conference message that it is “Haram” for a Muslim to continue in the Army!

Surely this is neither worldly wisdom nor Justice but only the Royal High Road leading the Government straight to political and moral suicide!

We find all the world in general and Anglo-India in particular waxing eloquent in condemnation of the forcible conversion of the Hindus to Islam by the Moplah rebels of Malabar. We who sincerely believe in and

actually practise religious toleration are entitled to condemn them : but may we know what right the Governments of India, Bombay, etc., and Anglo-India have to do so ? If we clear our minds of all cant and hypocrisy, all prejudice and partiality, we must honestly fail to see how and wherein the Moplah's sword against the Hindus of Malabar for their religious faith differs—morally—from the Government's present prosecutions of the Indian Muslims for *their* religious faith ! We fail to see how Section 131 or 505 I. P. C. is a morally nicer or less repressive instrument herein than the famous Moplah knife ! We may frankly state that from the ethical standpoint we personally prefer the highway robber to the polite thief, and the murderous ruffian to the gentlemanly cut-throat. Of course, tastes differ in all matters and there may be those who prefer being cheated by the smooth-tongued hypocrite to being assailed by the rough highwayman. But, all the same, so far as the actual cheating or murdering goes, we see no practical ethical difference between the two. Even so is the present prosecution of Islamic religious opinion, on no higher moral plane than the Moplahs' persecution of the Hindus in Malabar ! In our opinion it is considerably *lower*. Hence our query about the Moplah *Mote* and the Government *beam* (St. Luke VI 41-42) !

When, for example, certain distinguished ecclesiastical and other leaders of the western world to-day (like the Rev. Prof. George Adam Smith the great Biblical Scholar and Commentator) come forward to point out the blemishes in modern Christendom and, in the sacred name and under the blinding authority of the Lord Jesus Christ Himself, denounce the Divorce Laws, etc., of Europe and America as wholly un-Christian, surely it is inconceivable that the so-called "Christian" Government of England, not content with trampling—in actual daily practice—on the noble teachings of Christ, can also proceed further and prosecute, and otherwise persecute, those learned divines who are, for faithfully obeying Christ and not for merely hypocritically naming Him !

It is clear then that there is a considerable body of Islamic theologians in India who declare it *Haram* for a Muslim to continue any longer in the British Army. If the Government honestly and sincerely thinks otherwise, its method of persuasion should not be the hatred and persecution of all and sundry who take or, like the Gerondins of old (in the days of the French Revolution) are even suspected to take, the opposite view, but only the threshing out of the question dispassionately by the

theological leaders of Islam and arriving at a *bona fide* settlement based on *their* conclusions. Any other process will not only not be a sample of the Equal Justice whose importation, at long last, into India, the Ex-Lord-Chief-Justice of England has all along been understood to have become Viceroy of India for, but will also be a terrible and suicidal failure !

If, as the result of such deliberations, it becomes inexorably clear that Islam actually and relentlessly precludes Indian Mussalmans from service in the British Army under present-day conditions, the Government should either let them withdraw therefrom or remove the religious obstacles in their path. Surely, if Mr. Lloyd George (as Prime Minister of England) can confer with the Irish Sinn Feinners in order to find a *via media* for reconciling Ireland's *Political* aspirations with England's requirements, much more therefore can and should Lord Reading (as Viceroy of India) confer with the Indian Khilafatists, in order to find a *via media* for reconciling the Indian Mussalman's *Religious Duty* with England's temporal rule ! Surely, the vital difference between the Irish Republicans and the Indian Khilafatists *i.e.* that the former believe in organised murder looting, kidnapping and incendiarism while the latter do not, should not be counted against the latter as the reason for refusing to hold such a Conference with them as that slippery electrical Mr. L. G., is holding with Sinn Fein !

If the Government, however, persists in its suicidal folly of looking upon its real well-wishers and conscientious advisers as its mortal enemies and insists on meddling with the sacerdotal affairs of Islam, it would be virtually ordering a new Khilafat for Indian Mussalmans in its own favour as against the original Khilafat enjoined on them by their Prophet Mahomed. And, whereas the rumours of 1857 about greased cartridges were perhaps false and the consequent panic of the sepoys about their Religion was possibly erroneous, there can be no doubt whatsoever that any declaration or action on the part of the Government in the direction of dictating Islamic Law to Indian Muslims according to its own sweet pleasure and over the head of the Heads of Islam, will be tantamount to the Virtual Supercession and Practical Proscription of the Quran itself and will, certainly and inevitably, drive the Muslims of India to choose definitely and expeditiously, one way or the other, between their Eternal Over-Lord Allah and their present temporal rulers the British a dark and fateful contingency which we (as sincere well-wishers of all

including the Raj and the Praja, England and India and so on) can only contemplate with indescribable horror and shuddering ! And yet, as this is certainly and manifestly the direction which the Government is, wittingly or unwittingly, drifting to, we feel it our Duty to call its attention thereto *for its own good* !

IX. THE CONCLUSION.

To recapitulate and sum up, so that our actual position may be grasped accurately:—

1. We *did* attend the Khilafat Conference of July last at Karachi and we spoke *twice* thereat (not merely once as deposed to by the prosecution witnesses).

2. Owing to our utter ignorance of Urdu, Sindhi and Persian, we knew nothing of the details of the proceedings. Nor did we concern ourselves with them.

3. On the night in question, we arrived late at the Pandal, were desired by Dr. Kitchlew to speak on Hindu-Muslim Unity, the Khilafat and the Angora Government and actually spoke on these subjects from our own Hindu Spiritual standpoint. We spoke of the sanctity of the Holy places of Islam and of the sufferings of the Angora Government which has got inextricably intertwined with the Khilafat Cause.

4. We should have spoken in the same way, had the honour and the integrity of Hinduism, Christianity or any other Religion been imperilled. To a true Hindu and particularly to a Sanyasi, *all* men are brothers and *all* Religions are Divine. And he regards the oppression of the weak by the strong anywhere as a denial of God's Law of Love and Justice that governs the world. The speech, therefore, merely expressed our Religious views regarding the present plight of Islam.

5. We had never yet uttered a single syllable about the Army anywhere. And it was only a few days ago here (in the Karachi Jail) that we heard, from Prof. Vaswani for the first time, about this tiny and incidental part of the Resolution in question.

6. This our contention will be found substantiated by the evidence adduced and the Exhibits filed, by the prosecution itself.

7. So, on the actual facts and the evidence, we are obviously innocent of any of the offences we have been charged with.

The same would seem to be the case with Maulana Shaukat Ali too even from legal point of view who, according to the prosecution evidence itself, did no more than stand up at the end to signify his assent to the Resolution (even as the whole Conference—excepting us and *including the Police*, as ~~deposed~~ to by the C.I.D. reporters themselves—did).

8. With regard to the intrinsic merits of the question of Muslim Soldiers in the Army, this is obviously a subject with which the Mussalmans alone are directly concerned. We have not ourselves studied the Quran and other Islamic Scriptures sufficiently and we always refuse to dogmatise or even risk an opinion on any subject that we have not thoroughly studied. The only persons who have any authority to discuss this subject are the Divines of Islam and they must naturally and necessarily decide it in accordance with their own sacred Law. Neither we nor any secular official of a non-Islamic temporal Government can be morally —or even legally—justified in meddling with such a purely Religious question.

9. If we had known, at the time of the Conference, that the Army question was on the *agenda*, we would have frankly expressed our ignorance of Islam *i.e.* Law, would not have presumed on our own authority to dictate to the Muslims on the matter but would have simply and clearly stated that, just as we ourselves always call upon all Hindus to perform their Swa-Dharma and obey the behests of the Hindu Religion so too would we expect and wish all and even incite all Mussalmans to carefully consider, correctly grasp and faithfully practise their Swa-Dharma and obey the injunctions of Islam !

10. It is our fervent Religious conviction that men of all Faiths and the Government too should adopt this universal doctrine of Swa-Dharma and therefore should also cheerfully accept such conclusions as the Divines of Islamic theology may arrive at on Islamic matters. For, it then becomes a question of Faith and the Prophets and thus gets beyond and above judicial courts, legislative acts, procedure codes and all such merely mundane matters. This is the principle on which the whole of Chapter XV (sections 295 to 298) of the Indian Penal Code is based, *i.e.* that you can only argue politely with and never force yourself on or

violate the feelings of even the most perversely stupid person on matters of faith. Before such prosecutions as these can stand, Chapter XV I.P.C and its principle *must first go* !

II. We therefore emphatically repeat that—on the evidence and from the ethical standpoint too—we are not guilty of any offence whatsoever.

We know from the "Dublin (Quarterly) Review" (July—September 1921) how His Holiness the (present) Pope Benedict XV of Rome—the true Servant, faithful Soldier and worthy Vice-Regent of Christ on earth laboured hard and impartially, with his sage advice of August 1917, to mitigate the horrors of—and, if possible, shorten the late War, how the selfish and godless " Powers" of Europe resented His Holiness's impartial ministrations (solely because they *were* impartial) and—in the compact between England, France, Italy and Russia—went out of their way to specially name His Holiness as one who (on account of his madness for righteousness and impartiality) should *not* be allowed to participate in the final peace negotiations and the settlement of issues arising out of the War and how the present League of Nations, too, has, similarly, carefully excluded His Holiness, harming itself and not him thereby ! Like him, we too have been giving our advice to the Raj and the Praja and once again, in conclusion, let us reiterate the simple Truth that, whether our advice is heeded or not and even if it is not merely not accepted but positively resented or even savagely 'punished,' we remain absolutely unaffected ! Like His Holiness the Pope, we too have the satisfaction of having conscientiously performed our Duty of Dharmopadesh by elucidating and clarifying the facts, preventing all preventible misapprehensions and emphasising Truth and Justice ! And this satisfaction will and does quite suffice for us !

From our own personal standpoint, there is neither pleasure nor pain neither fear nor bravado, but all within is Bliss and Joy and Peace which in the words of the Apostle, "passeth all understanding!" And, as regards the external aspect of life, a Sanyasi who has merged the petty individual self in the Universal All-Self cannot worry about that. He neither seeks to live nor wishes to die.

And, after all, as Brahma said on a memorable occasion recorded in the Shrimad Bhagwat (III, 16, 37),

विश्वस्य यः स्थिति लयोद्भू व हेतु राध्यो ।

योगेश्वरै रपि दुरत्यय योगमायः ॥

क्षेमं विधास्यति स नो भगवांस्त्र्य धीश ।

स्तत्रास्मदीय विमृशेन कियानिहार्थः ॥

(i.e. He, the primeval Being who creates, protects and destroys the Universe, whose infinite powers are inscrutable mysteries even to the highest Adepts, who is Perfect and who is the Lord of all—He will look after our welfare ! What purpose shall *our* solicitude serve herein ?)

And has not Shri Krishna too said in the Bhagwad Gita :—

नहि कल्याण कृत्तश्चि दुर्गतिं तात गच्छति ॥

नमे भक्तः प्रणश्यति ॥

तेषां योग क्षेमं वहाम्यहम् ॥

i.e. (1) My dear boy, none that is a doer of good shall perish !

(2) My devotee shall never perish !

and (3) Their welfare and progress *I* look after !

And is he not shouldering all our burdens, according to His public and definite promise ? Where then, O ye of little faith, is there any need or room for anxiety and worry ? Let no one therefore fear, grieve or worry on our petty personal account !

With Dante, the great Italian poet, let us say :—

“In la Sua Voluntade e nostra pace”

(In His Will is our Peace).

Om Tat Sat.

After Shri Shankaracharya finished at about 4 p.m. (on 29th October) Maulana Shaukat Ali gave the following address in English :—

MAULANA SHAUKAT ALI'S ADDRESS TO THE JURY.

Gentlemen of the Jury and the Judge,

I am personally not capable of making a long speech. If you interrupt me in the middle of my argument I lose my points. I am not so clever as my brother. If you interrupt him in the middle of his speech—if you ask him questions he will never lose his argument—he seldom misses his points. I am positively certain if you will give me a patient hearing—I think you will have no complaints. If the trying Magistrate had just the little patience to hear me—to let me say my say in my own way, he would not have had any complaint whatsoever. It is not my desire to waste your time or my own by inflicting a long speech upon you. I am also anxious to see the case finished. I am very anxious to see my mother and fellow-workers go away without any further delay. There is so much work to be done. I begged of her and wished her to go away. But she said that she wants to go away either with us or without us without further delay when the case was finished. So I cannot afford to make an unnecessary waste of your time and mine by making a long speech. Besides, we have much work to do for the country.

Before I go further and say what I want to say, I want to clear a few points. I am one of the Secretaries of the C. K. C. and I have worked much for it and if the C. K. C. have done anything—any work that has been done by this Committee—with the help of a large body of earnest workers, I have played an important part in it. I am very glad—I am very thankful to the P. P. that he has acknowledged what I have done for it. And whatever I say now, I hope, will be taken as absolutely fair and truthful. I want to speak everything frankly—I want to speak out what is the real truth for your information and for the Judge.

I just give you the information which the Prosecution failed to supply to you. Poor Maulvi Nisar Ahmad who had just come from Mathura Jail—convicted under Section 124A for six months—he is even now a prisoner. He came with us all the way from Gokak. While coming with us from Bombay he got fever in the train. He also was with us when my brother and myself and Dr. Kitchlew were living at Kanyapathshala, that is further information I give to you. Poor Nisar Ahmad was laid up with fever. He was not a member of the C.K.C. He took no part in the Subjects Committee. He was not elected to it. In the

Conference meeting he was called upon to speak, as he is a great preacher. He spoke nothing outside the Quran and the Hadees. The people were anxious to hear him. He said only a few words.

You have heard Maulana Hussain Ahmad, Pir Ghulam Mujaddid Saheb, my brother and Dr. Kitchlew—they have told you—that if a Muslim goes to a Muslim scholar to know what the Law of Islam is, it is the bounden duty of him as a theologian to give him a fair and square answer. So Maulana Nisar Ahmad was asked to speak on the subject. The subject is very simple for a Muslim—he requires no time to think over it—it is not necessary at all. He was in fever and so he made a short speech. What the effect of this information be on his case, I do not care—no true Mussalman would care—to bother as to the result of speaking of what he regards as Gospel truth. Another thing I want to say and that is about Shri Shankaracharya. Our Karachi friends wanted him to come with us. So on an invitation from the Khilafat Committee like Mrs. Sarojini Naidu he came with our party to attend the meeting. I here take the opportunity of gratefully acknowledging the sympathy and support of our Hindu brethren in our Khilafat cause. We have a very large number of Hindus—who are helping us as workers and even as office-bearers—there is not a single city in which we have no Khilafat Committees and where we have not a large number of Hindu workers with us. I have travelled all over India—and I may tell you that in all places the Hindus are working with us or giving us assistance—and in many places—where Mussalmans are weak they are working as members of the Committees and even as Presidents and Secretaries or as workers. So Shri Shankaracharya came to give his Hindu ecclesiastical support and sympathy with the Khilafat cause. And I may tell you again—Mahatma Gandhi—our great Sirdar—our great Chieftain, he also comes and gives us his support. We carry our ordinary business ourselves—we draw up our resolutions—we talk—we quarrel—we fight in our Subject Committees—but as a rule we send for him only when we want him to make a speech often not on any Resolution. But these speeches are made only in a general way especially to prove his sympathy with the Khilafat cause. So too Jagatguruji came in and spoke. Whatever value you may attach to it you may—but it is God's truth which I consider as my duty to put before you.

As for myself, I am not going to make a speech in my defence except to tell you what I think and I ought to tell about our work clearly and

frankly. After what you have heard from my brother and from that great theologian-gentleman, that one speech, that one statement which I would beg of you to consider and pay greatest respect and attention to is that of Maulana Hussain Ahmed Saheb. You have heard Dr. Kitchlew and Shri Shankaracharya, you have just heard. I have nothing left in store for me (laughter). But I want to tell you this and which I hope you will appreciate why we are doing all this? The Judge incidentally put a question to the P.P. when he was trying to prove a conspiracy that "Did he not think that this Res. passed at the Karachi Conference was meant more for the Government so that they might realise the feelings of the Muslims"? Now, I may speak for myself and for Mahatma Gandhi—having lived with him—we have practically lived as two brothers—I want to tell you and the Court so that you may understand that every effort by us, by Mahatma Gandhi—by the C.K.C.—by all our workers—sympathisers—extremists and moderates—every effort possible has been made to bring this home to this Government that it is a very serious question. For Government's sake you must realise this. Believe, me, gentlemen,—every possible effort was made to make this Government realise the gravity of the situation—we asked them—"satisfy the Muslim demand—rectify the Punjab and Khilafat wrongs and grant us Swaraj"—the Mussalmans, the Hindus—every one will be perfectly willing to co-operate with you.

Col. Wedgwood he is a Christian, he is an Englishman. He came over to India to study the question. I heard from my brother and friends in England that Col. Wedgwood had helped the Khilafat cause in and outside Parliament. The Khilafat Committee in Bombay convened a public meeting to welcome him—and Col. Wedgwood was present there—we thanked him for his efforts. A Resolution was put in—and I proposed that Resolution. I spoke in his presence. I told him frankly that my heart was burning to-day against England—and it will continue to do so, as long as British had not evacuated the sacred places of the Muslims—so long as the British Government has not satisfied the Khilafat wrongs—so long as they had not redressed the Punjab wrongs—so long as we did not get Swaraj—so long as these were not done, I counted myself as an enemy of England. I hate every body who is an enemy of my God—who is an enemy of my Faith and my Country—and all that lies in my power, I shall do in getting my rights back—and I told him also that any body—be he an Englishman—be he a Jew—a Parsee—agnostic

or whosoever he may be —any body who comes forward and does some thing to help me in getting my rights back—who will help me in giving me satisfaction about the Khilafat—about the Punjab wrongs—and help me to win Swaraj—there is the hand of brotherhood and fellowship I offer. And Col. Wedgwood jumped up and took it. I shook hands with him. And I spoke in Urdu and told the audience—there were 25,000 of them—“ Do not blame me as I am shaking hands with him—it is because he helped us in our Khilafat work. He has come to study the Khilafat question. He has come all the way with an open mind to study the question—and he is going to do what he can. And on behalf of the Muslims of Bombay, nay for the matter of that—for the Muslims of the whole of India—I offer him my hand of brotherhood and fellowship.” And they all said do it. I say now again whosoever helps us—whosoever helps us in giving satisfaction with regard to the undoing of our wrongs—whether he is the Judge—whether he is the Public Prosecutor—or the Jury or the Viceroy—whosoever he may be—we all offer him our hand of fellowship and brotherhood. Every effort was made—every effort has been made and is being made by us to justify our cause and in getting our rights back. When we were in Jail there was no Khilafat Committee worth speaking. There was no organisation. There was no fund. Dr. Kitchlew was in jail—my brother was in jail. On the 28th December 1919—from the Betul Jail we proceeded straight to the Congress at Amritsar. There was held a Khilafat Conference. I was asked to preside in that Conference. We did not think of a Revolution then—we did not think of a Republic —we did not think of rising in rebellion—I did not say that we are all rebels—I did not say that I acknowledge no King—that I owed no allegiance to him—that I did not say that I was a free man and India was my home and God alone my King.—I did not say that we do not want your Police, your Army and your navy—I did not say that I do not want the protection of your lands—then I counted myself as the subject of the King-Emperor. At that Khilafat Conference, gentlemen, a resolution was passed that a deputation was to wait on the Viceroy to put everything before him—to put our case clearly and moderately. Another Resolution was that we must send a deputation to England to put our case before the King, the Parliament and the people of England. I, as President, was ordered to make arrangements. The Government of India readily assented to receive the deputation--and on 19th of January 1920—the pick of the Mussalmans—the Ulema—the pick of the Hindus and Mahatma Gandhi was in the gallery

—we waited upon the Viceroy and put clearly our demand. The Viceroy made a speech. He had personal sympathy with us and he realised that the Moslem feeling was genuine. And he got the deputation to England a passage in February next. My brother, Maulana Suleman Nadri, Mr. Syed Hussain and Mr. H. M. Hayat—they were members of that deputation. The deputation sailed and we waited for months and months—to see what answer we got from my brother—we were eagerly waiting for a cable from him. Meantime every possible effort was made to carry our message to our people—everything was put before the Viceroy to make him and the English people realise our grievances—that it is a matter of our religion—it is a matter of our conscience. There was no question of bluffing in this as has been hinted. We mean business now and we meant business then. We wanted that England should know what the Muslims felt about the Khilafat and once for all realise the strength of genuine Muslim feeling.

People ask—what has become to the Ali Brothers? I tell you, we have our English friends—I was in Government service for 17 years—my brother was brought up in England—was for four years at Oxford—I was one of the best cricketers in my day—I was a strong swimmer and an expert athlete—I was socially popular. Mr. Ross Alston will be able to tell you that. I met him in Benares—I was then in the Government service. I want to say all this to show that we are not by nature revolutionary—that we are not born in a Revolutionary family. I have not gone mad—a mad dog has not bitten me (laughter). But things have happened which have upset us—we, who were once very careless—we who were used to put on fine clothes—we, who are brought up in luxury—those old days are gone—you have no idea how dressy and smart this brother of mine Mahomed Ali was—how he used to spend thousands of rupees on clothes only—but things are different.

Well, the point is this. We did what we could in India. We made our appeals to England—to British Ministers. The Government of India sympathised with us—they wanted to show a generous spirit. The Government of India, the Governor of Bombay realised the feelings of the Muslims. The Governor of Bombay, I am told, said that “my heart is in sympathy with the Muslims but it is not in our power. Go to England.” Therefore we sent over a deputation. They went over everywhere. They interviewed Mr. Montagu—they interviewed the Prime Minister—they saw Members of Parliament. They addressed meetings

in England, in the country in Scotland. But to no result. They went over to France. They knocked at every door—waited for some little consideration—some little ray of hope. We waited for a message. My brother for days and months never sent a message. At last a message came. We came to know that “France is willing to make an honourable peace with Turkey and satisfy what the Muslims demand is”—and that Italy had already made a peace with Turkey and that it is our Government, the British Government alone who was unwilling. When the war broke out England promised on the 5th November 1914. Lord Hardinge made a definite pledge made on behalf of the King—and even the Czar of Russia was consulted.—and they all agreed to this that all the Muslim sacred places will be immune from attack and molestation. I do not remember all the details. One clever brother in the family is more than sufficient (laughter). But all the same what I am telling is absolute truth. Therefore I am not keeping back anything—because we are straightforward. We tell you in your face what we think. And God willing, I still hope—hoping against hope—that things will not be bad—as bad as they are. Let us hope that.

We came to know that it is impossible—we can get nothing from England—that’s what our deputation told us—and in the meantime we were not idle—when we found that England’s pledge carries no weight—we acted like old Cromwell—“Trust to God and keep your powder dry”—we carried this message to every home in India—we roused the Muslims—we roused our Hindu brothers to work, to do what lay in our power—when we found there was no hope—that this Government would pay no attention to all our appeals—to all our memorials—to all our beggings, prayers and petitions—we decided after a full consideration—after a great deal of heart searching—and the great man whom I, a Mussalman, am proud to acknowledge as my Sardar and Chief—Mahatma Gandhi—he who is not only a great man—a good man, a clever man, a shrewd *Bania* as he is—who thinks two hundred times before he says anything—he thought and thought over it and at last told us that there was no chance whatsoever to make this Government realise the wrongs it has done or to repent for its actions—but to put difficulties in its way—in a peaceful way that they may come to hear us. And we started Non-Violent Non-Co-operation. We spread that message all over India. I have travelled many thousand miles—I have travelled all over India—I have been spreading this message to thousands and thousands of our

fellow-countrymen and countrywomen—working and carrying this message to every home—man, woman and child. How many thousands of miles Mahatma Gandhi travelled—how many thousands of miles I have travelled—how many thousands of our people—Hindus and Mussalmans are working for the Khilafat and for Swaraj. Gentlemen, we know and the Government knows it well. We do not mind what the Anglo-Indian papers write about us—what our Moderate brothers say about us. Our chief is the coolest man—the one man that never gets excited is Mahatma Gandhi. He is calm—he is resourceful—he is too careful—he knows what he does—and he knows how to do a thing. And I may tell you, gentlemen, —I will betray him—I think he in his heart of hearts still believes in England —that she will yet apologise—yet repent when she realises our just cause—will appreciate the justice of our demand regarding the Khilafat and the Punjab and will give us what we want : I have studied him—he breathes in his heart of hearts that every Englishman and Englishwoman is not what the Anglo-Indian newspapers picture them to be—he still believes that the British Government will yet come round—they will satisfy the Muslims—they will yet give satisfaction on the question of Khilafat and the Punjab—and give us what is necessary. If so, well and good.

Gentlemen, there is a well-known Persian proverb —you call me a Haji and I call you a Haji—“*Man tura Haji begoyam, to mara Haji bego.*”

Gentlemen, I have told you, I want to be fair and square. I am a frank man—and I know my brother also. I brought him up as a little boy—at Aligarh ate up his pocket money—I thrashed him when he questioned about it—I educated him—I sent him to Oxford. I have followed him as a friend and I now follow him as a leader. There is one weakness in him that I tease him about. There are two—one is that he cannot forget the 4 years he had at Oxford. He had a certain affection for England and its people and the second is by nature he is a believer in constitutionalism. If there is one constitutional man in India—it is Mahomed Ali and that's why he was so much worrying the Judge and the Jury. But circumstances are different. We are being forced—we are doing all this because we must. You know my faith—you have heard my brother—you have heard Dr. Kitchlew—you have heard Maulana Hussain Ahmad Saheb—all of them have told you that we must work and induce others to work

for a good cause—it is my faith as a Muslim—it is a perfectly good thing for me to die for God and truth and it is equally a good thing for me to kill for a good cause. I am not afraid of this.

But we have thought over the whole thing. We still give the Government every chance possible. Mahatma Gandhi and we all of us in the Congress Special Sessions in Calcutta in September 1920—we said within one year we will get Swaraj and that we will start Non-Violent Non-Co-operation. The Congress took up our Khilafat programme—adopted it—this period expired on the 30th September. But on account of the Congress decision we have extended it till 31st December 1921, and in this period to make every possible effort that lies in our power to bring this Government to realise its duty to carry out the promise made—and to give us every satisfaction. You may think, Sir, that we are shewing discourtesy to you—that we mean any insult to your person. No, personally I am as humble as any thing. If you wish I may make a honest and sporting offer to you. To-day if any personal humiliation you may require from us—from me—from my brother or from Mahatma Gandhi—if you ask us without any show of force—without any threat—if you want us to crawl for you—if you want me to crawl on my belly—though I am so heavy, I will do so—I will write poetry on the ground with my nose and whitewash my face and body. I will do all gladly and cheerfully only on this promise that you will give me satisfaction as regards my demands. To-day, believe me, when I go to say my prayers five times a day—and turn my face to Kaaba (Mecca) not always but sometimes when God's light is on me my heart tell me "You coward, your Kibla (Kabba) is not yours. It is in the hands of men who are not going to give it back to you. The custodian appointed can't afford even to keep it clean or light. You ought to be ashamed of yourself." Yes, this is true. The law of the Quran says that no Non-Muslim should have any control whatever over any part of sacred places, in the Jazerat-ul-Arab. Take it from me that what I am saying I am speaking from facts. I am perfectly willing, if you satisfy me on those points to do whatever you like. You may hang me—you may transport me for life—I will not object—I am perfectly willing to go on my knees—if you (judge) will only throw away—the file, run and go to Simla to-morrow and tell the Viceroy there that we are not blackguards—that you are convinced of our sincerity and that you cannot convict us under any section of the Penal Code for our adherence to Islamic Law—and tell him to satisfy our just demands. After all, what are we guilty of? We do not want anybody's home—we do not want

any part of England—we do not want anybody's property—I do not want that this Judge should be hanged and I should go and take his place (laughter). No, I want to hurt no body. I only say 'Give me back my own! you have no interest in that; it is a land of sand—it does not produce anything. There is nothing in this country. It is a most uninviting country—the climate is hot and no European can stand that. On that barren country my Prophet and his companions walked barefooted. If I had health and strength, I would like to kneel at every step and kiss every inch of that sacred ground, perchance I may kiss one particle of sand that had touched my Prophet's feet. To-day I am non-violent. We have an army of workers. If I am in jail, my mother is working. My brother is in jail, his wife is working, though she is not as brilliant as my brother—she is working. Thousands of women have come out throwing away their veil. Many thousands of new workers have come out—they are all praying for us. I saw when I came to this hall, old and young women pray for us and point with their heads towards Heaven. Each one of them will tell you that God is with us—children, boys, old and young—they are all with us. I have travelled from Karachi to Assam—I have travelled all over India—and I may tell you, gentlemen, I have seen the same everywhere—these feelings are very strong.

Gentlemen, you have heard a great deal about Malabar. People say that the speech that my brother made in July in Karachi—(Interrupted).

The Court.—I will not allow you to speak on the Moplahs.

M. S. Ali.—I am not going to talk on the Moplahs. You will appreciate what I say. My brother never went to Malabar. Mahatma Gandhi and myself went there. We reached there at 12 o'clock. We were carried in a procession—then we went to the public meeting. The next morning we came back to Madras. I saw that it was our weak point. We had no workers there and what there were were, hampered. Wherever we are strong—wherever our workers have reached—thank God, the peace of India is kept and orders of the Jamiat-ul-Ulema—the orders of the Khilafat Committee—the orders of the Congress and the orders of Mahatma Gandhi have been carried out.

Gentlemen, you know how the Anglo-Indian Press have been flouting the religious demands of the Muslims—how Mahatma Gandhi and others are ridiculed—they say all sorts of things about us—and I may tell

you frankly that some young men they were exasperated at this constant slander against us in the Anglo-Indian Press—these young men—their blood was boiling—they came to us and asked us “what are we going to do?” They said—“We can not remain Non-Violent Non-Co-operators always” and I said—“No” to them. I tell you my reasons. Where a question of killing comes in—I will go and kill myself. But we cannot have two things together. We cannot have peace and war both. We can only have one policy. The order has gone out that we are to carry out Non-Violent Non-Co-operation. You cannot have two things together—either you will have peace or you will have war—Revolution. And up to 31st December we shall have peace. Every order of our Sirdar Mahatma Gandhi, the great Chief in this campaign—we have got to carry out. I may tell you, gentlemen, the danger is there—the feeling is there. It is the feeling everywhere—in my heart—in all the accused’s heart—in every Muslim’s heart—in every Hindu’s heart—in every Indian-man and woman’s heart—and the two, Hindus and Mussalmans are combined—the women have thrown off their veil and have taken up the nation’s work—the feeling is working—it has reached Afghanistan, Persia, Arabia, Turkistan, Khiva, Bokhara and Russian Muslims and to numerous other people—to the Muslims all the world over. As a secretary of C. K. C. I get many informations—it is my business to find what the Muslim world is doing. And I am very glad to tell you—it has reached practically every house in India—to every Muslim in the world. I am not saying all this as a threat. This is a fact which you will have to realise. We went to the Viceroy and we gave him a warning. My brother went to England and spoke clearly to the Secretary of State—we said, we are agreed to make peace—Dr. Ansari, Mr. Chotani and other people did go to England—Mr. Chotani has only just returned. They did their best. We had to tell the Government and I tell it again—through you—and through this Court—I want this message should go to the higher authorities that we are perfectly willing—we are anxious to make peace—but let the Khilafat be satisfied to the satisfaction of Islamic Law, not of any individual Shaukat Ali or Mahamad Ali or Kitchlew—let the Punjab wrongs be righted—and I want you to carry this to the authorities at Simla or elsewhere—let there be a conference of Thirty men—men who have understanding—whom India trusts—reliable men—God-fearing men—who have got truth in them and who in their daily life followed no other law—who will see what the whole Muslim demand is—and if such men (Ulema) give a Fatwa saying that England is going to satisfy your

demand and now you can co-operate with them—I shall be very glad to go and shake hands with every English officer and be a subject of the King again. This is honest truth. But suppose this is not done, you may say ‘what you will do, do it at once.’ Well, I shudder to think. I cannot forget—I who was most friendly with the English people—among whom I count some of my intimate friends—I who was educated by Englishmen—next to my mother, I owe everything to Englishmen—I cannot forget this—when I wish to fight against Englishmen the figure of my revered Professor Theodore Beck comes to my mind. I know what he is to me. This is honest truth. I wish that we should, as soon as possible, get our quarrels settled without any further unpleasantness. My true feeling is this—that as India is my country—it is the country of every one—Hindus, Muslims, Sikhs, Jains, Christians and Jews—who has made it his home—and even of every Englishman or woman who has made it his or her home and is ready to serve and love my country—and I hope no body will be tormented here—when I have my Swaraj—on account of his conscience. Whosoever is true to India—whosoever will serve her will find his place here and the laws of the country will protect him. That is why I am anxious that India should not become another Ireland or Egypt. We are 33 crores here—we can very well look to our coasts—we can very well guard our frontiers.—Look at the hugeness of its coast—at its land frontiers—there is a corridor from Constantinople right up to Saharanpur where the majority are Mahomedans—all through Muslim countries—Afghanistan, Persia, Arabia, Bokhara, Khiva, Russian Muslims—we know there are 40 crores of Muslims in the world and our brother Hindus—22 crores of Hindus—they have thrown in their lot with us—and is it worth while to fight 62 crores? We fully realise our strength. I can assure you that this is not bluff. We know our strength. Our chief, our great Sirdar Mahatma Gandhi will prove to be one of the greatest Generals if he could believe in violence. I have also the blood of a soldier in me (laughter). But the battles will be fought in India. If we kill a few Englishmen here—many Karachi houses—my relatives’ tombs—Muslim tombs—Muslim houses—Hindu houses—many Muslims and Hindus—they will be killed and destroyed if we kill a few Englishmen here. But I know my strength from what is happening in Malabar. In spite of all the resources and powerful military strength, the Government cannot subdue the handful of Moplahs. I can draw my strength from every district in India. Malabar is a small district—it is only a few Mahomedans—they are fighting and fighting for two months—Every district in India is stronger than Malabar.—You can take it from

me—every district in India is stronger than Malabar. The Muslims in every district, in the Punjab—United Provinces—and Bengal—they are stronger people—they have more brains—they are more educated. What would be the effect if the whole country was like Malabar? But I want to avoid all this because it is not by bloodshed that we want to satisfy our demands—it is not bloodshed that we want. We have made every possible effort to make the Government realise the situation—we have given them time to think up to 31st December. We were working hard—day and night. But our object was that we wanted to the Government to think, “Why was all this done.” I asked Mr. Ross Alston—he knows me from my boyhood, I told him—look at me—I who had had a large number of English friends.—I who was a Government servant for 17 years in the Superior grade of the Opium Department in which there are very few Indians—I am still on the Pension list, though I do not draw the pension—I have friends among the Englishmen there—I know there are many English men and English women who will be sorry that I have taken this attitude. But to-day I know none but God. I am not bitten by a mad dog—I am not insane—I am perfectly in my senses when I make this speech—but what is it that has made me this? How is it that we have come to this pass? I know I am making an incoherent speech—but it is my heart that is speaking—I am putting my heart before you. But how is it that we have come to this pass—we who were Khushamat is (flatterers of this Government). What has happened to us? How is it that we who were so much against the Hindus and the Congress are more forward than even Hindus in general? I asked Mr. Ross Alston this question when I met him to-day. He said that an English officer only last night asked him the same question about my brother. Well, I am perfectly willing to make peace with any body—to make friends with the Hindus—with the Christian—with any man—whatever nationality he may belong to so long as they do not mean any harm to my country or to my religion—I am perfectly willing to do so. Gentlemen, looking at my big size, I look terrible—I look like an awful ruffian—you would not like to meet me in a dark lane at 12 in the night—looking at my heavy body, you will not judge me, I pray. I was a great swimmer, I was a good boxer, I was one of the best bats (cricketeers) in India—for nine months in the year I used to be in camp walking a happy careless fellow—and yet to-day—I make a confession that my religion demands, my country demands all I have—I am obliged to throw away

my personal feelings—I have thrown in my lot for my God and for my country—and I am now in the service of God.

Somebody said something about my home in Moradabad. The P. P. asked Mr. Lakhte Husein who said that I had a house and lived there. I think he did not tell a lie intentionally. But I may tell you at once that we have no house there. As I cannot go to Rampur so whenever my mother wants to see me or I want to see her I go to my cousin who has got a house at Moradabad and she comes there and meets us.

People say that there is no want of toleration in this country—but I should like to tell you why I and my brother are not allowed to go home to Rampur. During the time of the Mutiny my grandfather saved the lives of many Englishmen and English women—he was then the right-hand man of the Nawab of Rampur and he had received a big Jagir as reward for his loyal services. My father got a share out of it and so did we though we have sold all our share in the Jagir when we were interned in the Betul Jail to defray our expenses—thank God that we have done with it and nothing is left. And I may tell you we have never been unfaithful to the Prince—we have never been traitors. This is my family tradition. The Nawab of Rampur personally has the greatest affection for me. He respects us. But one day, when we came back to our home after our release—after we had dined with him—His Highness said—“ Few days ago Sir Harcourt Butler sent for my Chief Secretary and he said Mahomed Ali and Shaukat Ali give us a lot of trouble—do ask them to give up what really meant the Khilafat cause.” And he said “ you have to give up this work or go out of Rampur.” I said Sir Harcourt Butler himself can do it—there are plenty of Regulations—they sent us under Reg. 3 of 1918, to jail—well, he can do it even now, but why should you ?—we have done no political work in Rampur—we have only come to our home for rest and comfort. Why should Your Highness do this dirty work for him ? He said “ I can’t help it ” “ You must choose either to give up work or go out of Rampur ” and that is why I rented a house at Moradabad as a sort of Rest House. We have not rented a house there that we may send out those writings from there. I do not want to prove it. You may take it from me if you like. That kind of work is not our style. But I think when our C.K.C., the Jamiat-ul-Ulema and all other people decided and ordered us to actively carry out this Non-Cooperation propaganda and when thousands of workers are actively

carrying this propaganda, God willing, it will reach tens of thousands of Subedars, thousands and thousands of soldiers—it will reach every Muslim soldier—it will reach every Hindu soldier—there will be tens of thousands of workers working everywhere—in every village—in every town—there would be thousands of females working, you cannot wrap up these soldiers in Cotton wool—you cannot shut these soldiers up in a glass case only for show—they have got to go to their homes—they have got their relatives and friends—we shall approach every Sepoy—we shall approach him in every possible way—his mother will speak to him—his wife will speak to him—our ladies have thrown off their veil—my mother will go to them—my brother's wife will go to them—my daughters will go to them—our women will go to them and give them the message of God—even if we are punished they will do it. How can you stop that? But still, even now, up to 31st December there is every chance of reconciliation—if there is no reconciliation—no settlement before 31st December then you will see—you (pointing to the Judge will not be there where you are now—the power that is in your hands we will snatch it—God willing, we will do it. We have strength enough. We have the power of self-sacrifice. We have the power of suffering. We have got power of organisations and brains. Our country is powerful—it is strong and it can look after itself. Whatever you decide, personally it is nothing to me. I am ready for everything—I am told there is a man-of-war sent from Colombo to take us somewhere—well, I shall be very happy in jail—I am still gaining in weight—my brother is also improving. So it is not a question of anything personal to me or to him.)

One thing more and I shall have done. After all, you would like to know why this prosecution has been started? I would like to tell you and the whole world— (interrupted by the Court).

Maulana Shaukat Ali continuing said—There is a vast difference between Mahatma Gandhi and myself. He belongs to the party—God's good people, I belong to God's *budmashes*. Mahatma Gandhi, Maulana Hussain Ahmed and Maulana Abdul Bari are God's good subjects and I and the large number of Hindus and Mahomedans—we are God's *budmashes*. Thank God—we belong to God. But we trust him (Mahatma Gandhi) and he trusts us. The Mussalmans and the Hindus have now united and every possible effort has been made and is being made to part us. If you read the pro-Government newspapers you will find, somebody says—Mahatma Gandhi is a saint—he is a good man but his

meeting with these ferocious people, the wicked Maulanas Shaukat Ali and Mahomed Ali who are in touch with the Afghans and in pay of the Turks and that Mahatma Gandhi is nothing as so much of clay in their hands. Others say Shaukat Ali and Mahomed Ali are very simple and straightforward, it is the wily Bania of Ahmedabad, it is he who has won over these Mussalmans and he is going to ruin them and the Mussalmans. It was said that Ali Brothers had apologised to Government when Mahatmaji and myself met at Allahabad in May last, we heard that Pundit Madan Mohan Malaviya was the peace-maker. He sent a message that the Viceroy would like to see Mahatma Gandhi and Mahatma Gandhi went to him to Simla. He went because you know he was always willing to step forward because he does not want bloodshed and we, too, do not want bloodshed so long as there is hope of success by means of Non-Violent Non-Co-operation. So he went to Simla and had six interviews lasting sixteen hours with the Viceroy, and Mahatma Gandhi sent us a wire to me and my brother to meet him at Khandwa—I was busy so my brother went and met him. Mahatma Gandhi said that there is an impression outside among friends and others that you (Mahomed Ali and Shaukat Ali) mean violence though you make a declaration to the world that you stand for non-violence. And he told all about the talk he had with the Viceroy. Mahatma Gandhi wanted us to make a statement to the people of India. He was very earnest about it. He said that he wanted us to go to jail but only on a clear issue, and he himself wanted to do the same. So I and my brother issued a statement that we do not mean violence while talking of non-violence. You know, gentlemen, day and night, for days and months, I have been working for the success of Non-Violent Non-Co-operation. And thanks be to God, tremendous changes are going to take place. India is marching with hundred bangle-boots on—with thousands and thousands of new recruits consecrated to the cause of the country and religion. India to-day is something new, and to-morrow she will be a newer thing altogether. There was one disease that Indian suffered from, thanks to the efforts of Mahatma Gandhi, they have shaken that off. We Indians were deemed as cowards, God be thanked, no body can say that now. The history of India is being shaped in a new fashion. So we obeyed Mahatma Gandhi's order and sent that message to the Press. Gentlemen, I may tell you even if we meant it for the Government of India, the Government of India ought to have been chivalrous enough to make peace with us. They would have said well when even the Ali Brothers have put in the statement it is easy

for us to sit on a round table conference." But this was not to be done. We were ridiculed. Mahatma Gandhi was ridiculed and the whole host of the Anglo-Indian press came upon us. And I am sorry our co-workers in jail were told that we had apologised to Government. Well, I could see there was no change of heart in Government, even in the Viceroy—we were told he was a very suave and persuasive man. He and his Government wanted to discredit us in the eyes of the Muslims. They wanted to discredit us in the eyes of the Hindus—they wanted to discredit us in the eyes of the world and we were to be as the "*Leader*" said "Ali Brothers were as bad as a door nail." However, I am very glad indeed—I am very happy indeed that this time the issue is very clear. I want your decision, —I want the decision of the Judge whatever it may be. Thank God, that before this our message could not reach the Army as we might have wished. By this prosecution it has reached every one of them—it has reached every home—every Mussalman—every Hindu—every Indian—man and woman. New workers are coming out and I am not afraid that there will be any dearth of them. Gentlemen, I leave everything to my God. Personally I do not care, jail or no jail. I want to tell you that all the gifts God has given me, every power, every little thing that I can do, and all that lies in my power, I will do for my God and for my country so long as the Government to which you belong—so long as this Government to which this Court belongs does not do justice to Khilafat, does not satisfy us, gives us back the power of Khilafat, does not satisfy us about the Punjab wrongs and does not give us Swaraj—all that lies in my power I will do, and God willing we will uproot you altogether. To-day I am a Non-Violent Non-Co-operator, to-morrow if, God forbid, Mahatma Gandhi fails, if the country fails I shall do whatever lies in my power. Thank God, we have got the courage, we have got the strength, we have learned the value of suffering and sacrifice and we will do whatever our great chief Mahatma Gandhi will ask us to do. God willing, we will face all dangers, face death with eyes front. (Here the Maulana was returning when friends reminded him about some verses, he turned back and said :—

Gentlemen, I want to say one thing more. Thousands of speeches I have made, attended hundreds of meetings, but when I am pleased and when the feeling comes in me and there is nothing to do I sing—though I

am not a singer. In jail now when I am locked up in my cell I recite the following four verses ;

ني پوروئي ٿيس، نه فرهاد ڪريونگي - هم طرز ڄاڻن ا. ر. ه. ايساد ڪريونگي
 ("We will follow neither the greatest lover Kais nor Ferhad....we will invent a newer kind of madness of our own).

جفا پر جان ديتي ٿين - هم پر اهي ڪي موليٰ ٿين - پر فاکم مڪتبت سمج ٿو ٿين
 هي ڪم ڪر ٿي ٿين

("They give their lives on your tyranny, they die on your cruelty. It is really these careless failed lovers who in truth do something great).

جفا جو عشق ٿين ته ٿين - هم پر اهي ڪي موليٰ ٿين - ڪچر ٿين ته ٿين
 ("The cruelty and tyranny practised on the lover and in love is no cruelty....If there was no cruelty in love, there would be no pleasure in love, and lastly though I hope there will be no need for it).

پڙا فلڪ ڪو ڪي ٿي دل ڄاڻن - هي ڪم ٿين - جلا ڪي ٿين ٿين ٿين ٿين ٿين ٿين
 ("The sky—stars—enemy of lovers—has not really come in contact with one having fire in his heart....Well ; don't call me Dagh (great poets' name) if I don't burn the whole into ashes.)"

SEVENTH DAY'S PROCEEDINGS.

TUESDAY, 1ST NOVEMBER 1921.

The Sessions Trial against Ali Brothers and 5 others was resumed by Mr. Kennedy on Tuesday, 1st November, in the Khalikdina Hall. The people on this day began to pour in the Hall earlier than usual to try their best to catch the inaudible voice of Mr. Kennedy. Anxiety mingled with keen interest characterised the minds of the audience who were awaiting that fateful moment when the jurors would deliver their verdict and the presiding authority, his judgment. The lack of proper organisation was writ large on the management of the authorities. The Press table was largely occupied by the members of the bar and even those who held ordinary visitors' tickets.

The staff of the Court had trebled-nay quadrupled itself and several clerks were found occupying chairs in front of the dais even in a better position than the press reporters. The leaders entered the Hall at about 10-50 and the audience as usual greeted them by standing up. Before the Judge entered, a clerk of the Court handed over typed copies probably of the Karachi resolution No. 6 to the jurors to read. The whole audience was waiting for the Judge. The clock struck 11 and then 11-30 but where was the Judge? the people asked. The Judge though he had arrived earlier than even the accused, was sitting in the chamber all the while and he was anxiously awaited.

Serishtedar came in from the back door at about 11-50 and the people thought the Judge will follow him. They were however disappointed in this expectation. The Serishtedar placed a copy of 6th resolution on the table of the Judge.

In came after all the judge Mr. Kennedy at 11-55.

He at once asked Mr. Atmaram, the Serishtedar, to read his charge to the "gentlemen of the Jury." The charge ran as follows :—

JUDGE'S ADDRESS TO THE JURY.

IN THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

SESSIONS COURT JURISDICTION.

SESSIONS CASE No. 33 OF 1921.

The King Emperor *v.* Mahomed Ali and six others.

HEADS OF CHARGE TO THE JURY,

Accused 1. Mahomed Ali of Rampur.

2. Moulvi Hussain Ahmed of Deoband.

3. Dr. Shifuddin Kitchlew of Amritsar.

4. Pir Ghulam Mujadid of Matiari.

5. Moulvi Nisar Ahmed of Cawnpore.

6. Bharti Krishna Tirathji *alias* Vekantraman.

7. Shaukat Ali of Rampur

are charged as follows :— (read charges)

"That you all the 7 accused at some time or times between the months of February 1920 and September 1921 both inclusive at Karachi and other places in British India were with others, parties to a criminal conspiracy to seduce Mahomedan Officers and Soldiers in the Army of His Majesty the King Emperor from their duty and thereby committed an offence punishable under section 120B-115 read with section 131 of the Indian Penal Code and within the cognizance of this Sessions Court.

2. And you the said seven persons are further charged that in pursuance of the said conspiracy attempts were made by a member or members of that conspiracy in or about the months of July or August 1921 to seduce Mahomedan Officers, from their duty by sending leaflets in the form of Ex. 34 to such Officers, and you thereby committed an offence punishable under Sections 120 B-109 read with section 131 I. P. C. and within the cognizance of the Court of Sessions, Karachi

3. And further that you Mahomed Ali on or about the 9th day of July 1921 at Karachi, made a statement of wit, that "it is in every way religiously unlawful for a Mussalman at the present moment to continue in the British Army or to enter the Army or to induce others to join the Army"; with intent to cause or which is likely to cause Mussalman Officers

and soldiers in the Army of His Majesty to disregard or fail in their duty, as such, and thereby committed an offence—punishable under section 505 of the Indian Penal Code and within the cognizance of the Court of Sessions, Karachi.

4. And further that you (accused 2 to 7 inclusive) conspired with the said Mahomed Ali to commit the said offence under Section 505 I. P. C. which he committed in pursuance of that conspiracy and you thereby committed an offence under section 109 I. P. C. read with Section 505 I. P. C. within the cognizance of the Court of Sessions, Karachi.

5. And further that you Mahomed Ali, on or about 9th day of July 1921 at Karachi abetted the commission of an offence punishable under Section 505 and-or Section 131 I.P.C. by more than 10 persons ; in that you stated in the All-India Khilafat Conference that "It is the duty of all Mussalmans and the Ulema in particular to see that these religious commandments (referring to the words quoted above) are brought home to every Mussalman in the Army" and thereby committed an offence under section 117 I. P. C. and within the cognizance of the Court of Sessions, Karachi.

6. And further that you (Accused Nos. 2 to 7) conspired with the said Mahomed Ali to commit the said offence under section 117 I. P. C. which he committed in pursuance of that conspiracy and you thereby committed an offence punishable under Section 109 read with Section 117 I. P. C. and within the cognizance of this Sessions Court.

The questions for your decision and opinion are not really very complicated and I hope that I should not have to detain you long, but the course which the trial has taken will render it desirable that I should express my views on matters not absolutely essential for the decision.

Before we begin I wish to say one word about the proceedings in the Court below and in this Court, which have been the subjects of some remarks from two of the Accused. There were no irregularities in the trial in the committing magistrate's Court, and if the magistrate in a case triable exclusively by the Court of Sessions, where the evidence is of the character which it is, and where the Accused reserved their defence contemplated at an early stage the probability that there must be a committal, he acted merely as a prudent magistrate should. The accused

read some objections to the alteration of the charge in this Court but the alterations are immaterial and merely intended to inform the Accused with greater precision as to the charges against them. Had the accused asserted at the proper time that such alterations prejudiced them in their defence, the court would have considered whether it was necessary for it to grant an adjournment, but no such objection was then taken. Similarly this Court has been particularly careful to see that no prejudice has been caused to the accused by the admission of evidence which was not before the committing magistrate at the committal proceedings. As for the trial in this court I think the accused will admit that they have been given far more latitude than the defence would have had, had it been in the hands of a professional advocate and that though the Court has had on occasion to vindicate, not the personal dignity of you or of myself, but of justice itself, I think I have rather erred in the direction of tenderness than of severity. Before we begin to approach the case I must ask you to clear your minds of a great deal of embarrassing matter. The principal charges against the accused are those of *conspiracy*. It is on the main question of conspiracy that you are asked to give your verdict, the minor charge of conspiracy without attempt is really strictly a question for me as judge, helped and guided by your opinion as assessors, but not bound thereby, but I intend to leave this charge also to you as a jury. It would not I think be decent or respectful to you in two charges so closely allied not to accept your finding in both of them as bidding in so far as this Court is concerned. As regards the other charges in respect to an allied but different conspiracy I must (guided and assisted by your opinion) form my own conclusions.

Therefore it is on the conspiracy that you must make up your minds and the issue between the accused and the Government which is to be decided by you is whether the accused were guilty of the conspiracy referred to in the first two charges. The accused are not being tried for sedition or high treason and if you find that the accused are not guilty of a conspiracy they are entitled to an acquittal however seditious or treasonable you may consider their conduct to have been.

Further I beg you to dismiss from your minds anything which the accused may have said about what may be called succinctly the Gandhi negotiations. The accused are being tried for specific and clearly defined offences, and not for any acts which are not the subject of the present charges. I do not propose to refer again to this topic.

Again you must dismiss from your minds anything which you may have seen in the papers about the *effects* of the Khilafat agitation. The accused are not being tried for being members of the Khilafat association and there is not before us a particle of evidence to their responsibility for the deplorable events in Malabar. They are charged before you with specific offences of conspiring to seduce the troops from their allegiance and with nothing else.

Again we must be careful not to allow ourselves to be swayed by any external personal considerations or sympathies. Shaukat Ali on Saturday indirectly threatened us with assassinations shortly after the 31st of December if certain demands of his were not granted by Government, we must not acquit him or the other accused if they are guilty on account of fear, for we do not fear him; because we know that neither Shaukat Ali nor his fedawis if he had such can abridge our allotted span of life by one instant, nor on the other hand must we convict him if he is innocent to show that we do not regard his threats.

On the other hand it is possible that one might reasonably feel some sympathy and respect for some of the accused. Some of the accused seem learned and pious men; of some it might be said "there are no citizens to whom the laws would owe more did they follow the right path." I do not give the rest of the quotation because I hope and trust it is not opposite. I think that Islam and this Empire and this country might have profited much by them had they not taken up this course, which whether criminal or not, is the path of faction and separation which can lead only to ruin and disruption instead of the path of union and co-operation which is the only one which can lead to peace and prosperity. Yet though we cannot but deeply regret that some of the accused are here at the bar of their Sovereign's Court instead of being high in the service or councils of His Majesty. We must not let that sorrow lure us from the path of duty which is to judge the prisoners at the bar according to the law of the land and the evidence before the Court.

Nor are we in any way to be swayed by our feelings as to the Turkish question. Some of us may think that Turkey has had hard measures meted to her. And as regards the house of Othman we may feel that whether or no it has any claims to the Khilafat, it has been for centuries the inheritor of the championship, the guardian of the frontier forts of Islam, the custodian of the sacred places, and the sword and buckler of that great faith and great civilisation, and we may sympathise with

those who feel aggrieved, that in these days when every petty nationality claims independence and an assigned territory, Islam alone should be menaced in its ancient seats. Others on the other hand may think that there is no wonder if that which came by the sword goes by the sword, and that there is no cause for repining if God has given to one Constantine what he had taken from another. But the accused at the bar are to be judged according to the law of the land, and the evidence and not according to our feelings, one way or the other in respects of the sides they have taken in this matter.

Now that we have cleared our minds as far as may be of personal matters or errors arising from idiosyncrasy, we must also free our minds from the errors that the accused have tried to create there.

The accused in their defence have strenuously maintained the propositions, *first* that their religion compels them to do certain acts, *secondly* that no law which restrains them from doing those acts which their religion compels them to do, has any validity, and *thirdly* that in answer to a charge of breaking the law of the land it is sufficient to raise and prove the plea, that the act which is alleged to be an offence is one which is enjoined by their religion. The first proposition is utterly irrelevant in this trial because the second two propositions are not true.

They rested their contention as to the invalidity of certain laws on various proclamations by Queen Victoria and her successors. Queen Victoria and Successors were and are constitutional monarches and employed constitutional advisors, and no principle is more vital to the constitution than the principle that the Sovereign's Proclamation has no effect to make invalid a law. For the law is itself the most solemn expression of the Sovereign's will. Any proclamation therefore which secures to the subject the free exercise of his religion can not repeal or make invalid any of the laws of the land which render certain acts punishable, but if it should appear at any time that there was a variation between any such proclamation and any such law then we should have to confess that our humble intelligence was not sufficiently powerful to understanding the meaning of both and we should have to apply the law of the land which we are bound to administer.

Fortunately there is no such conflict visible here. The proclamation assures to every man the free exercise of his religion. It does not permit him under the colour of his religion to attack the rights of others, or the

rights of the Sovereign whose protection he invokes. What a chaos any country would be and particularly this country if the doctrine *Sicutere Tuo, ut alienum non Laedas* were not strictly applied. There are so many jarring sects and creeds in this Empire that there is hardly a single crime which some person or other might not commit under the colour of religion. Therefore the legislature of this country (careful as it has always been of the religious rights of the subjects) has laid down as prohibited certain actions, which must be prohibited in the interests of civilisation, applies penalties to the breach of such prohibitions, and calls on us to apply those penalties if the prohibitions are disregarded.

If by some mischance a person finds himself in the painful position that his religion and conscience clearly and sincerely impel him to a course of action which the law of the land forbids, he must if he wishes to escape the penalties of the law, either procure the law to be changed or leave the country. If he will do neither and proceeds to break the law then he must be punished. He cannot approbate and reprobate, he cannot invoke the protection of the law of the land when it suits him, and break it when it suits him.

A man whose conscience tells him to break the law of the land and who does break it, may possibly merit our respect and sympathy, but cannot escape our punishment. Whether the executive should in such cases invoke the law is a question of expediency only. There have been martyrs in all ages from Antigone to Cavell and there have been perverse fanatics in all ages. The law cannot discriminate. All it can do is to find the alleged offenders guilty or not guilty and if he be found guilty inflict the penalty, leaving it in the hands of the Executive Government to exact the penalty or not at its discretion, and leaving to the offender the prospect of a reward (if he has merited it) which will compensate him richly for our temporal censures.

The questions therefore whether the Mahomedan religion renders it unlawful for a Mussalman to kill another Muslim, and whether the accused were bound to propagate that doctrine, or whether the accused genuinely believed that they were so bound and that such killing is unlawful are really not at all relevant to this case and I should have wished to keep all such questions out of this charge. But the accused have per-

sisted in raising it with much eloquence and show of learning. I endeavoured to stop them, though the discussion was one which was highly interesting, because I did not wish to confuse the issues and did not wish to allow the present trial to be a means of propagating doctrines which I consider dangerous and unsound. I was unable to do so without prejudicing their defence and had to permit much propagandist matter of an irrelevant description to appear on the records of this case and to be expounded to you and to the audience. I have therefore reluctantly come to the conclusion that I ought to express my own opinion on the matter. I am not of course pronouncing what is actually the right doctrine in the matter, I am merely tentatively submitting certain doubts which I have to the orthodoxy of the position of the accused to your consideration.

The proposition is stated in the widest terms in the resolution and in the comments of the accused. It is that for one Muslim to kill another is "Haram" an act totally forbidden and which is not atoned for and repented of will expose the perpetrator to the penalties of hell. This is clearly stated in the Quran but the prohibition in that verse cannot be an absolute prohibition as are the prohibitions against Zina (fornication) or Shirk (polytheism). For it is admitted that there are two cases in which a Muslim may be lawfully slain, namely where he is himself a murderer and the family of the victim will not take the blood fine, and the case where a Muslim has been convicted (on proper evidence) of adultery. Moreover, the verse does not provide for accident, self defence, error or the like. It is therefore one of those prohibitions which is relative and contingent but not absolute.

Its limitations and conditions must therefore be ascertained by independent enquiry and particularly by a consideration of the action of laudable persons.

We have little guidance during the life time of the Prophet, which will help us in the present age. The Quran is of course a perpetually binding law and not subject to fluctuations, being co-eternal with the Almighty, but the application of the rules to existing circumstances depends on the condition of things at the time when we seek to apply it. During the life time of the Prophet the temporal Kingdom extended over Arabia only. The Muslims were a homogenous people speaking the same language, living the same sort of life, townsmen and pastoralists, under much the same sort of Government that of noble

chieftains, divided only by the deeply feeling between Yemen and Mudharr, which for the moment was lulled by the supremacy of Islam. Its boundaries were the sea on three sides, and the shattered empires of Rome and Persia on the fourth. It needed no permanent Army, no salaried officials, no roads or fortifications. The Army was the occasional levy of the tribesmen, the judges were the companions of the Prophet and the learned ancients, the administrators were the chiefs and the principal burghers, and the roads and the fortresses were the deserts within 10 years of the death of the Prophet. The Empire of the Muslims extended over a vast area bounded by the Berbers on the West, the revived Roman Empire on the North and Turks on the east; it contained a vast heterogeneous population of very diverse origin, language, customs and faith, accustomed to a highly centralised administration. All the requisites of the Empire had to be provided and paid for, and it became very soon apparent that neither the Quran nor the traditions adequately provided for the necessity of rule. It is related of an early Caliph that the news of his election, reached him while he was reading the Quran. He is said to have shut it with a sigh and to have said "This is my last time with thee," meaning thereby, not that he intended to disobey the precepts of his religion, but that he could not devote himself exclusively thereto. Accordingly very soon the rules of "Siasat" began to be developed and pious Muslims began to wonder. What is this secular code of use and wont which, if not contrary to the divine law, is at any rate not sanctioned directly by it? You will find innumerable discussions on this topic, some persons going so far as to say that all kingship is unlawful, because the king must necessarily levy unauthorised taxes which he spends partly on his self support and because he must kill men for offences which are not adequately punishable by the religious law with death. There is an interesting discussion on this topic by an Indian Historian in the form of dialogue between Ala-ud-din Khilji and Sheikh-al-Islam, but the approved opinion is, that while no man is bound to take the kingship yet if he *does* he is guilty of sin, if he allows the temporal kingdom and the affairs of the Muslims to go to ruin for lack of the due enforcement of the necessary temporal rules, which must no doubt not *contravene* the sacred laws, but are not directly sanctioned by it, and I have seen severe strictures written by pious men on kings who acted not like kings but like ascetics. But almost the first requisite of temporal rule is that the authority of the ruler should be upheld. Now when the Prophet and his immediate successors were alive there was no dispute in Islam, the church and state were coterminous and there

could be no rival claimants to the temporal headship. Any Muslim who drew the sword against his fellow Muslim must be a rebel and a renegade. But the succession of Ali was challenged because the Beni Umayyā and the adherents of murdered Othman would not acknowledge him. Accordingly the first person to draw the sword against his fellow Muslims was Ali (with whom God is satisfied) the head of the Holy House, at the Day of The Camel. It is true that at the battle of Siffin, Amru Al Aaas, the general of Muawiya of the Beni Ummaiyya did much what the accused are said to have done, he imported purely into a temporal matter a question of religion and by binding the Quran to the lances of his soldiers forced Ali to submit to an arbitration, but all schools reprobate this action. It is true also that for a short time Ali was Officially cursed and that he was assassinated by a non-co-operator of the time, but all schools now regard Ali as one whose actions are worthy of imitation.

Thereafter the Beni Ummaiyya retained the Caliphate with some slight and temporary interruptions. Some of them were tyrants, some of them great princes, some of them pious and learned men, but none of them showed the slightest hesitation in putting down rebel or rival claimants, without much regard to the sanctity of the claimants or the validity of their claims. What Muslim Bin Okba and Ali Hajjaj did with the holy cities is known, as also what Ziyad did in Irak, and why did Hussain Bin Ali go to Irak, not I think, to drink the waters of the Euphrates or the Tigris or to deliver lectures in Kufa or Basra but to maintain his rights, sword in hand, like a valiant prince. I cannot therefore at once admit without doubt the proposition that it always is unlawful for Muslims to slay Muslim on the field of battle. But perhaps it may make a difference if the Muslims are attacking the Caliph.

For this position also I can find no authority. To begin with, the Caliphate may be disputed. Within 70 years of Hijra 4 standards were displayed at Mecca, of 4 princes each claiming to be Caliph. What is the simple minded Mawla or tribesmen to do in such a case? Is he to decide and decide rightly on pain of hell-fire which is the rightful claimant. God does not compel you to impossibilities. The soldier cannot be guilty of sin if he keeps his faith to his rightful patron or chief. The sin (if any) is on the chief and not the soldier.

But many orthodox *princes* have stood up against the Caliph. The Caliphate passed by War from the house of Ummaiyya to that of Al Abbas and the house of Al Abbas became thereon lawful Caliphs. Yet Abdur Rahman the Amir of Spain held out against Al Mansur ; defeated his armies, decapitated his general, and suspended that general's head in the Mosque at Kairwan. Al Mansur did not curse him, he declared him to be " the falcon of the Koreish." The Ulema of Cardova, Seville and Tol Toledo, issued no Fatwa against *him*. He lived and reigned gloriously, and was the progenitor of a mighty line of princes for ages the protector of Islam in the West. After the reign of Al Mansur, province after province fell away and became a principality under a separate prince. This process went on till after the reign of Al Radhi. The Caliph had no territory under his immediate rule. All these princes recognise the Abbassid of the time as lawful Caliph, and read the Khutba in his name, but none of them had the slightest hesitation in attacking him and defeating his forces and making him prisoner if he attempted to recover any actual territory. Princes like Beni Buyya the house of Seljuk, Zengi of Edessa, Khawaris Shah were all at one time or another warring against the Caliph or keeping him prisoner.

And how did the house Ottoman get its doubtful claims to the Caliphate, not by election but the marching of Salim on Egypt, the defeat of the Sultan of Egypt who was the representative of the Caliphate and the forced abdication of the legitimate Abbassid Caliph (then stationed in Egypt) in his favour. It cannot therefore be denied that Orthodox princes have warred against the Caliph and coerced him in the exercise of his power by the fear of the sword ; without incurring the guilt of sacrilege. And this doctrine of any particular sanctity in the Office of the Khilafat seems to be a new thing among the Sunnis, invented, I believe, by the very band of rebels and innovators who actually deposed Abdul Hamid. I was surprised to see in one of the papers in this case, (I think) in one of the Fatwas, an assertion that the Caliph was the representative of *God*. I thought it was sufficiently known that God is universally and eternally present and does not need a deputy or representative. Also that on the day of Alastu the contract was between God and person and each individual soul of every man without deputy or intermediary and that therefore there is no priestly caste or profession or semi-divine ruler to stand between the Creator and the creature. The Caliph is the representative of the Prophet but he is not supposed to have any share in the apostolic gifts. He is the temporal Lord of the Muslims and may without

sin be opposed by the temporal weapon. I know that the Shiah's views are different ; some of the extreme Shiahs holding very peculiar views as to the nature of the Imamate—but the orthodox Shiah Imame is for the present in a state of abeyance and the Ismailis have not had a reigning Caliph for 800 years. I cannot therefore think it established that it is an act worthy of damnation to war against the Caliph simpliciter.

But perhaps the meaning of the dictum may be that it is unlawful for Muslims to wage wars against other Muslims in the service of non-Muslim princes ; Here we are not very well provided with authority of precept because there have not till recently been considerable bodies of Muslims living under non-Muslim princes, and likely to wage war with Muslims. In Spain the Muslims evacuated the country as the Christians reconquered it. In Siciliy the Muslims were loyal soldiers of the **Mun** Norman and Hohenstauffen kings, but the wars of those princes were chiefly with Christians, and if they fought with Mussalmans at last it was chiefly with the Fatmidis. In India when the Bahmani Kingdom was established it was at continual war with the Hindu kings Vijya Nagar and the Vijya Nagar Kings used to enlist Arab mercenaries from Hadrra-maut. I believe that the Bahmani Kings used at one time to put such mercenaries to death as guilty of assisting Kaffirs against a Muslim prince, but they soon abandoned that practice. Whether the slaughter or the abandonment thereof was done in accordance with any religious opinion I know not. The Mahrattas who broke down the Mahomedan dominion in India freely employed Mahomedan troops, and whatever may have been the fate of Ibrahim Gardi I never heard of any Mahomedan soldier of Shivaji or the Peshwas being condemned by any Mahomedan tribunal to death as a renegade. Haider Ali himself was for long in the service of the Hindu Raja of Maisur and fought for his Master against the Mahomedan sovereigns of the Deccan and Karnatic but I never heard any one blame him on that account.

And look at the question from a reasonable point of view. An enlightened and civilized Mahomedan people is living in a fertile province under the benign sway of some Hindu power. Bordering the plains are hills inhabited by ferocious Muslim tribes independent and continually raiding without attempting to conquer the plains below. Is the Mahomedan who fights to repel these tribes from the hearths and homes of the Mahomedan population to go to hell, because, he does so in the armies of a Hindu prince ? But it may be said that this is defensive warfare.

There is no real distinction between the offensive and defensive warfare. Aggressive warfare is at all times and circumstances a sin, but offensive warfare may be the only possible form of defence.

I think, therefore, when we come to analyse it, the meaning of the doctrine preached with so much rhetoric and learning by the accused is merely this, that, any Muslim soldier who fights in a War of which the accused disapprove, is to go to hell, and leaving the dwellers in dark corners of the mosque and the grubbers along old records to say what they think fit I would ask any Muslim who may be a Sayyed and a Faties what he thinks of this doctrine ; that a Muslim may voluntarily engage himself in the service of his prince, may take his pay and provisions and be his partner in the glory of the kingdom and then, when the day of peril comes, and his prince calls on his soldier for help, the soldier is to break his plighted oath, and the ties of fealty and leave his prince to be dethroned and slain, because, his prince is a non-Muslim and his enemy is a Muslim. I cannot believe that these are the two doctrines of a religion the Prophet of which was the 'Best of man' and had the title of Al Amin.

These therefore are my views on this defence of the Accused but as I have said it is perfectly immaterial for the purpose of this case whether these views be correct or not. If the proposition set forth by the Accused be as alleged, namely, that it is unlawful for any Muslim to serve in the British Armies at the present juncture and if it be religiously true and incontestable and if the accused conspire to bring it under the notice of the troops, then the greater is the guilt of the Accused, because, the troops were more likely to be seduced than if it were wholly erroneous and absurd.

I have now done with this preliminary matter and I now come on to consider the *charges* against the Accused and I will first deal with the charges under Section 131 for the ancillary sections. As I have pointed out it is for you to consider the evidence under these charges and return a verdict in accordance with the evidence. Any expression of opinion as to the facts which I may make, is not binding on you and it is your duty to reject such opinion if you do not agree with it.

Section 131 forbids an attempt to seduce a soldier of the King from his allegiance or duty. Such attempt is therefore an offence and it is punishable with maximum sentence of transportation for life, and with lesser penalties. Section 120B forbids persons from entering into a criminal conspiracy to commit an offence punishable with transportation for life or with certain lesser penalties. Whether such an offence is actually committed in consequence of the conspiracy or not, and section 120A defines conspiracy as an agreement by two or more persons to commit (inter alia) an illegal act or offence. It is here laid down that when the conspiracy is to commit an offence there need be no act done in consequence of the conspiracy to render the conspiracy criminal; and it is further laid down that it is not necessary that the offence contemplated should be the sole or ultimate object of the conspiracy. To give an example, suppose some people agreed to gamble in cotton. That is not an offence. They buy futures in cotton at a certain rate. The market begins to go against them. They agree to forge telegrams from America, saying, that the American crop has been a total failure, and to corrupt some Telegraph Officer to send out these forged telegrams to various merchants as if they were genuine. If this agreement to forge telegrams passes beyond the initial stage of mere contemplation as a possibility, and the gamblers actually make their minds to do so, then they are guilty of conspiracy even if they do not after all procure to be issued such forged telegrams. So here, if the accused or any two or more of them agreed to attempt to seduce the troops, whether that was the main object of their agreement or not, then such of the accused as entered into that agreement are guilty of the substantive offence of criminal conspiracy even if nothing further was done and are punishable under Section 120 B and 115 which provide that when an offender abets a crime of the nature described which is not committed in consequence of such abettment he is liable to maximum seven years' rigorous imprisonment.

Our gamblers would of course be liable to more severe punishment if their agreement to forge telegrams passed from initial stages of agreement and preparation into actual perpetration, and so any of the present accused would be more heavily punishable if any members of that conspiracy, (not necessarily the accused) went on to attempt actually to seduce the troops, the accused would then be punishable under Section 109 I. P. C. which makes the conspiracy punishable with the same punishment as that assigned to the offence.

It is not necessary in order that any member of a conspiracy should be punished for an act committed in pursuance of the conspiracy that he should have committed or even contemplated that *particular* act, it is enough if the act is committed by a member of the conspiracy and was a natural consequence of the conspiracy. Suppose A, B, C, D, conspire to kill E. It is agreed between A, B, C, that B and C should ask E to dine with them and that B and C should poison E. E attends the dinner but does not eat anything. As he leaves the house he meets D who shoots him and kills him ; B and C are liable for the death, even though they had never heard of or seen of D, who had dealt exclusively with A. It would be different if D were not a member of the conspiracy and shoot E out of private hostility. In that case D would alone be punishable for the murder and B, C and A merely for a conspiracy which had proved abortive. On the whole then the following are the questions as to which you must make up your mind.

Was there a conspiracy to commit an offence or to do a legal act by illegal means ?

Was one of the objects of that conspiracy to attempt to seduce the troops from their allegiance and duty ?

Were the accused or any of them members of that conspiracy ?

Did any member of that conspiracy whether the accused or not actually attempt to seduce any soldier and if so was such attempt at seduction a natural consequence of the conspiracy,

These questions cover the first two charges.

As for the first two questions conspiracy may be proved in several ways. Very often you get a traitor or spy who acquaints himself with inner working of the conspiracy and is admitted to the secret counsels of the chiefs thereof, and details in Court what he has learned. There is no such evidence here.

Or again you may seize papers and correspondence at the Head Quarters of the conspiracy or from the possession of some leading persons in the conspiracy, and it may be apparent from a perusal of such papers that there was a conspiracy, and it may appear what its aims and methods were and who were the members of it. There is little such evidence here.

Or again you may have evidence that certain persons entered into a common course of conduct, they adopted a definite line of policy, they spoke in favour of it, they acted in a way which is explicable best by supposing that they had already agreed to support and carry out such policy. Then if the evidence makes it highly probable that they were so acting in furtherance of the common object of some conspiracy you can legitimately deduce that there was a conspiracy and that the persons whose actions were apparently directed to the furtherance of such conspiracy were members of it. It is of course open to them to allege that their actions were purely fortuitous but then it is for them to prove their case, or at any rate to give some reasonable explanation of their conduct consistent with their innocence.

Let us take an example. E is found murdered in a river. It is proved that A, B, C and D were great friends and all had common reasons for disliking E and wishing him out of the way. They were continually meeting together just before the disappearance of E. A asks E to dine with him in a lonely house and makes E drink; E's carriage comes for him, but B says to the coachman that E has already gone home, so that when E comes to leave he has to walk through lonely streets. C drives up a cab which he leaves at a certain point-D shoots E at that point, puts his body into the cab and drives it to the river where he throws the corpse in. A and B then write to the police and give the information that on the day of the murder they had seen E leaving by train for some distant city. The Court might legitimately deduce from these facts that A, B, C, and D, were in a conspiracy to kill E, and that he had been killed in consequence thereof. But it is clear that it would be *possible* that A, B, C, had been acting innocently, only the *prima facie* case against them would be so strong, that the Court might legitimately call on A, B, C, to prove their innocence. And if they failed to do so, it would be justified in convicting them on this circumstantial evidence.

The Crown alleges that there was a far-reaching and wide-spread conspiracy which included among its objects the seduction of the troops. The accused deny this. I am much embarrassed as to this part of the case by the failure of the accused to defend themselves as to the facts and it was for that reason that I asked the accused to allow a professional gentleman who is in their confidence to argue for them as *amicus*

curiae, but they refused. So we must do the best we can by ourselves. My own opinion by which you are in no way bound is that there was, but I shall try to put the case for and against this theory as fairly as I can.

There appears to be a body called the Khilafat Committee of which the accused are all either members or with which they are in sympathy. That those who are not members are in sympathy therewith appears to me shown by the fact that they all have at various times appeared at meetings of that body or of the conferences called thereby and have openly supported it. What the primary object and constitution of that body may be I know not. I presume that its original object was lawful. For it was allowed to continue its propaganda unchecked. There are laws against the sedition and treason. The law gives the discretion to apply those laws just as it gives the executive power to pardon. But to refrain from applying the law in any case whatsoever, more particularly when the rights and interests of innocent third persons were affected by the failure to enforce the law, would in my opinion (as in the case is indiscriminate pardon of convicted offenders) go perilously near to the exercising of the illegal dispising power. The Court cannot without extreme indecency suppose that there has been any such unconstitutional act committed by those in authority and it must therefore presume that the aims and objects of this body were on the whole legal.

And it appears to me very likely that the movement was originally started with no particular intention to incite to illegal acts. It is quite likely that the intention was to strengthen the hands of the Pro-Turk party at home in their attempts to get the allies to deal leniently with Turkey or at any rate to prevent the powers from supporting the Greeks. The friends of Turkey in this country could best do so by getting a noisy and frothy agitation. This has of late been a very common policy in India. And from what M. Shaukat Ali said the other day it is no entirely beyond the reasonable bounds of conjecture and the accused must be given the benefit of any conjecture that may help them that the agitation was at first looked on with favour if not encouraged by eminent person both in India and Europe. It would be a great weapon in the hands of the number of the Philo-Turk party if he could put pressure on the members of the Cabinet at Home or on the body of Ambassadors abroad, by representing that Indian Muslim feeling was violently excited on subject of

Peace terms with Turkey or on the question of support to Venezilos or Constantine. There is thus nothing wildly improbable in the idea supported by the allegation of accused 7 that the Khilafat movement met with certain amount of support at its inception. But even if that was not the case, and the movement was purely spontaneous, there would be nothing illegal or improper in an agreement amongst some Mahomedans to carry on an agitation in favour of Turkey ; even a very forcible agitation, as long as they did not agree to commit any crime in connection therewith or to carry it on by illegal means. Once it was in contemplation to carry on the agitation by illegal means or to support the agitation by committing the offence of abetting (that is inciting to) crime, then the agreement to agitate would become a conspiracy and all who join the conspiracy knowing that its objects were generally criminal would be guilty of every criminal act committed in furtherance of the conspiracy.

And it would seem difficult to suppose that the agitation long continued within legal bounds.

The particular illegal acts with which we are concerned in the present trial are the incitals of the troops to desert. As early as February 1920 we find Shaukat Ali speaking on this topic at Calcutta and declaring it unlawful for troops to remain faithful. We find him presiding in March at a meeting in the Surma Valley in Assam where the same doctrine is preached. Then somewhere in September or October an alleged Fatwa is obtained (to which accused 2 and 5 are signatories) in which it is laid down that it is unlawful for soldiers to remain in the Army. Then in November the proceedings of the so-called body of the Ulama is obtained in which the same doctrine is upheld. Then in February 1921 we have a re-publication of the alleged Fatwa signed this time *inter-alios* by the accused 2, 4, 5, wherein the same doctrine is established, and all readers are exhorted to bring it to the notice of persons concerned. A large number of copies of this pamphlet was distributed by the Central Office of the Khilafat Committee and there was a further large distribution of a re-print. This was between February and July 1921. Accused 3 and 7 are Secretaries of the Khilafat Committee. There are three other Secretaries, Abdul Ghani (who is not an accused in this case) says, that he was solely responsible for the ordering and the circulation of this pamphlet.

Then in June accused 1, 3, and 7 went to the large Military Station of Poona where a meeting was held which those accused attended, and where the accused 7 Shaukat Ali made a speech in which he said that

a fund was being established to help in the support of soldiers who left their service. Then in Gokak on the 19th June there was another Khilafat meeting where Accused 1 proposed and accused 3 seconded the resolution which declares it to be totally unlawful for a Mussalman to remain in the Military Service of the British Government. I have not read you all the speeches, resolutions, Fatwas and proceedings again, because they are no doubt fresh in your memory. The accused have not challenged their authenticity or the accuracy of the reports or translations, they do not say that they bear any other interpretation than that which is apparent.

We now come to the Karachi Conference which was a meeting of the general body of the Khilafatists. It was held with great publicity in a large town to which Mahomedans of all classes resort, which is an embarkation Centre and a Military Station, and in some ways the commercial Capital of an area largely inhabited by Mussalmans of the fighting classes.

Accused 1, 6, and 7 arrived in Karachi on the 7th July and went in a procession round the city. Accused 1 and 7 put up in a Girls' School near the place where the Conference was to be held. Accused 3 also put up there. A Subjects Committee was formed which held the meeting at the Girls' School twice on the 9th of July. Accused 1, 3, 6 and 7, attended one or both meetings. In the evening of the 9th July there were various resolutions proposed and passed and among them was this resolution No. 6 (Read it out).

" This meeting of the All-India Khilafat Conference heartily congratulates Ghazi Mustafa Kemal Pasha and the Angora Government upon their magnificent victories and the success of their most desperate (or self sacrificing) endeavours in up-holding the laws of Islam and this meeting prays to Almighty God that they may soon succeed in expelling the whole of the armies of the foreign Governments from every nook and corner of the Turkish Empire.

In addition this meeting clearly proclaims that it is in every way religiously unlawful for a Mussalman at the present moment to continue in the British Army, or to induce others to join the Army. And it is the duty of all the Mussalmans in general and the Ulemas in particular to see that these religious commandments are brought home to every Mussalman in the Army.

Furthermore this meeting also announces that if the British Government were to take any Military measures against the Angora Government directly or indirectly, openly or secretly, then the Mussalmans of India will be compelled to commence breaking laws, that is Civil Disobedience with the concurrence of the Congress and to proclaim in the forthcoming Annual Session of the Congress Committee to be held at Ahmedabad the complete Independence of India (and) the Indians and the establishment of a Republic Government in India."

The accused No. 1 introduced it by a few words saying what a very important resolution it was, and how it was the essence or marrow of the Conference. The resolution was then moved by accused No. 2 who supports it in a long speech, in which he tells a story about a deserter from the British Army to Turks, who was killed by one of his comrades for deserting and whose corps on inspection showed evidently that he was accepted a martyr, whereas the soldier who killed him, being afterwards killed himself showed obvious symptoms of damnation. The speech is very vehement and strongly in favour of every part of the resolution.

Accused 3 then supported the resolution. He supports the resolution on the general grounds that it is religiously unlawful and politically inexpedient to support the Government in any way.

Accused No. 4 is a Sindhi Pir. He translated the resolution into Sindhi and spoke in favour of it though we have not got his speech before us.

Accused No. 5 Nasir Ahmad made a very short but very violent speech in support, adducing what he supposed to be strong religious reasons for desertion.

The accused 6 spoke. Accused 6 is a Hindu and claims to be the Shankaracharya of one of the great dioceses into which the India is divided, and is a strong sympathiser with the Khilafatists' movement. He made a speech of a non-committal character which does not touch on the question at issue, but asserted the need of Hindu-Muslim unity in the face of the aggressive policy of the British which menaced both, and he concluded by saying that the Muslims ought to obey the rules of their religion just as the Hindus are bound to obey the rule of theirs.

Mahomed Ali, the President, Accused 1 then asked the audience their opinion, and requested them if they wished to pass the resolution, to stand up and pass it standing, which they did. Accused pointed out the importance of the resolution and asked that God might give him and his audience strength to carry out.

Shaukat Ali did not speak on this occasion, but stood up in support of the resolution. He was at the time sitting on the dais.

The correctness of these speeches is not denied. Next day on the 10th Shaukat Ali went to a town called Naushahro Feroz in Sind and presided at a District Conference and made a speech which covered a large area. *Inter alia* he said it is Haram to serve in the Army.

These are the activities of the accused in the present case, from proof of which the Crown asks us to deduce that there was a conspiracy to seduce troops and the accused were parties to it. To me it seems clear that however lawful and constitutional a body of the Khilafat Committee may have been in its origin and however permissible the agitation it carried on at first, it or a section of it, soon began to rely on a dangerous religious propaganda and that it saw that its efforts were more likely to be crowned with success. If instead of a bogus agitation it began a really dangerous one and the menace which was more likely than any other to have any effect on politicians here and in England, was a threat of tampering with the loyalty of the troops and in order to apply that menace it began to preach this doctrine of the unlawfulness of the military service in open and public places in such circumstances that the news of this opinion was likely to reach the troops and to fortify itself by procuring the alleged Fatwas and proceedings of the so-called Ulema so that it might have these to appeal to if the orthodoxy of its position were challenged and began to circulate those opinions to the public. From that moment in my opinion, the Khilafat agitation became illegal and those who joined it were members of a conspiracy regardless of the fact whether any actual attempts were made directly to seduce the troops.

That an appeal to the troops to desert is a criminal offence, cannot be disputed. It is no crime under 131 section, to urge people not to join the Army, because no one is legally bound to do so, but Col. Gwyer's evidence makes it clear that a soldier is not at liberty to resign his ser-

vices except at the end of the time for which he was enlisted, and that to leave the army before the arrival of that time would be the crime of desertion and would be an act in derogation of his allegiance and duty.

Personally I do not wonder at the accused taking these violent decisions. You have seen them in Court, heard their statements in the Lower Court, and heard their speeches here, and you can have no doubt that with the exception of No. 6 they openly glory in their hatred of the Government of India and the British name.

The accused, however, say there was no conspiracy and as I have pointed out before however violently seditious or reasonable their acts and speeches may have been they are not to be convicted in respect of these charges unless there was a conspiracy.

I may first note that the accused do not admit the translation of a material part of the resolution to be correct. It runs in our version "It is the duty of all the Mussalmans in general and the Ulemas in particular to see that these religious commandments are brought home to every Mussalman in the Army." The true version is "The commandments of religion in respect of this matter." But I do not see that this helps the accused much. Their speeches and their endorsement of the Fatwas (so called) left no doubt what they conceived the dictates of religion to be.

The Mahomedan accused say also that there was no *need* of conspiracy. It is they allege a clear precept of the Law of Islam that no Mussalman should kill another. I will for the present purpose admit that this is so. They say also that it is the bounden duty of every Mussalman, if he sees a man infringing the law of Islam to point out the error of his ways to the offender. Therefore they say that individually and without any previous concert they proceeded to preach these doctrines. I do not believe this. Admitting that the Law of Islam makes it incumbent on every pious Mahomedan to make himself a busy body, and go round preaching to his brethren at all times and seasons in respect of irregularities he may perceive to be committing instead of extended his own life and perhaps quietly admonishing his friends. I do not see why the accused should all unanimously have picked out *this* particular sin (if it be such) to reprove. There is a fine field for missionary activity among pious Mussalmans. The accused might have gone to Stamboul or Angora and admonished their brethren to give up the reprehensible practices of

slaughtering Zimmis and Mustamins, or to the Hajaz to admonish the ruler thereof to cease from what the accused consider to be his rebellion against the Sultan, or nearer at home they might have preached against fornication, sodomy, wine-bibing, the use of silk apparel, the excessive use of music, the neglect of prayers, fasting and pilgrimage and the like actions Haram and Makruh, which are not wholly unknown in India or might even have admonished their Hindu allies as to the dangers of Shrik or polytheism. They ask us to believe that they fortuitously and without previous concert picked out this particular action as one in respect of which they thought their duty impelled them to preach. I find it difficult to believe this.

In the case of accused 5 Nisar Ahmed he is alleged in the speech for the defence to have been suffering from fever at the time of the Conference and to have made a very short speech more or less fortuitously. This may be so, but it is a very bitter speech and well calculated to impress the audience with the sinfulness of serving in the Army. He is also one of the signatories of the so-called Fatwa. I am myself convinced that he was well aware of the nature of the agitation, highly approved it, and furthered it to the best of his ability.

In the case of the Hindu accused No. 6 his story is that he was totally unaware of the nature of the resolution to be moved. He does not know he says, (as is very probably the case) Hindustani. He was not a member of the Subjects Committee and merely came to the Conference to give the weight of his "pontifical authority" to any resolutions that may be passed, without troubling to examine their nature. If this is true he is an almost intolerably frivolous and irresponsible person but he is not to be punished for that. His speech is no doubt highly non-committal and of course the subject was one of which he had no authority to speak. On the other hand he is no doubt a Khilafat sympathiser and prepared to further the cause of the Khilafatists to the best of his ability. You must consider his case on its own merits very carefully.

It is alleged by the witness Abdul Ghani that his obtaining and circulation of the book of Fatwas through the Central Committee was on his own responsibility and that none of the accused were responsible for this action on his part. This seems very difficult to suppose the system in force in the office of the Khilafat Committee is extraordinarily lax but it may be so. But that does not I think help the accused much. In

my opinion the obtaining and circulation of the Fatwa is a side branch of the conspiracy clearly intended to further its general aims, and the accused are responsible for it if they knew nothing about it.

This I think is all the evidence and the arguments for and against the accused. On the whole I come to the conclusion that there was a conspiracy to seduce the troops and that some of the accused were members of it, but this is only my opinion. You must form your opinion and are in no way bound by mine.

The next point is as to the actual attempt to seduce the troops. As regards this, it would appear that it was not the Official or decided policy of the Khilafatists to start an active campaign of seduction of the troops by direct overtures on a large scale at present. It was enough for the present purposes if a sense of doubt and uneasiness spread in the minds of the troops and this would best be done by preaching the doctrine of the duty of desertion openly under such circumstances, that the troops were likely to hear of it from their friends and associates. We have it that these doctrines were preached openly in Karachi and Poona (both large military centres) perhaps that was enough for the leaders of the movement. That would not amount to an attempt to seduce. But it is further in evidence that a leaflet was circulated and addressed to Mussalman Officers in Several Regiments, in which this doctrine was preached. It does not refer to the resolutions of the Khilafat Conference (except perhaps inferentially). It purports to be an abstract of the so-called Fatwa. It contains two gross errors in Arabic in the quotation from the Qoran and it is therefore very improbable that any of the accused saw it before its final printing. There is nothing to connect the accused with the issue of it. On the other hand it was issued by some one in sympathy with the Propaganda of the accused, and if such person was a co-conspirator, then the accused would be guilty of the offence of actually trying to seduce the troops even if they knew nothing about the leaflet, or its issue. On the other hand it would be by no means impossible to come to conclusion that it was issued by some enemy of England who was not a member of the conspiracy and who was probably a Hindu. In that case the accused would not be guilty of the offence of actually attempting to seduce the troops. This concludes the matter which is before you as a Jury and I now come on to consider the charges on which I must invite your opinion as assessors. The opinions I give are purely provisional and I shall reconsider them after you have given your opinion. The accused I is charged with having made a statement at the Khilafat Conference that

"It was in every way unlawful religiously for a Mussalman to remain in the British Army." With the intention of causing or knowing that it was likely to cause Mussalman Officers and soldiers to disregard or fail in their duty. This is an offence under section 505 of I. P. C.

The accused admits having made that statement but he says it is true statement. That may be. But that does not exonerate him from the guilt if he *intended* that the making of such a statement should induce Mussalman soldiers to fail in their duty. It is only when there is no such intent that making of a true statement calculated to act in that way on troops is excusable .

Suppose the Government is sending troops to a very unhealthy place like West Africa. The owner of some patent medicines writes a letter to all Officers Commanding in the Regiments detailed for the expedition and paints the horrors of the climate in vivid colours saying the only hope of surviving is to fortify the constitution with daily use of Potts Patent Piliules. The law says that he is not guilty of an offence under section 505 because the statement is true as to the climate and though calculated to alarm the troops and make them reluctant to proceed on the expedition, was not made in order to produce that effect by the quack, but for his own private profit. But suppose then some wily agitator gets hold of the circular and reprints it and sends it to every man in the regiments detailed for duty, saying " you see what the eminent authority doctor so and so says about the place to which the Government is sending you" hoping and expecting that the troops will refuse to go or go reluctantly and sullenly. Then the law says he is guilty because his intent is evil. Here the question therefore would be not whether Mahomed Ali believed this statement to be true but whether he made with the sincere wish to cause his brethren to repent or with a wicked intention of making them mutiny or desert. He himself seems to leave no doubt on the point. His only regret is that the troops are not yet contaminated and that there is at present no chance of a mutiny on the scale of 1857.

I had some doubts at first as to whether an expression of opinion by a private person, could be a statement within the meaning of section 505. For instance if some one sent round a circular saying " Mr. Smith is of the opinion that soldiers are sinful men" that would not be a statement of the character referred to in 505 because it is not very probable that any soldier would pay much attention to the opinion of an

unknown Mr. Smith. But I now think that Mahomed Ali, as President, Khilafat Conference, is a person of sufficient importance to make his opinion have some weight with Mahomedans in general.

The other accused are charged with having conspired with accused No. 1 to commit the said offence. This conspiracy is not the far reaching conspiracy referred to in the previous charge. If the other accused or any of them agreed with Mahomed Ali that such an opinion should be published even 5 minutes before the uttering of such opinion with that criminal intent then they are clearly guilty of conspiring with him. Now all the accused were there in Karachi and had opportunities of talking over the matter with Mahomed Ali and they showed by their signs and speeches that they approved of his formulating that opinion. It is not therefore a very violent deduction that they agreed with him, that he should utter it and that they should support it. The next charge against Mahomed Ali is the abetment by the public of an offence under Section 505 or 131. It is in reference to the same resolution which was introduced by him at the Karachi meeting and that resolution urges on all Mussalmans in general and the Ulama in particular of the duty of bringing this statement to the notice of the troops. I have already expressed my provisional opinion that this statement is of the character referred to in Section 505 and is calculated to produce the effect made penal in section 131. The number of Mussalmans present was considerably more than ten and resolution was intended to reach the public in general. It seems to me therefore that this is a case where there was an abetment by the accused of the public—consisting of more than ten persons to commit these offences, the punishment for which is laid down in Section 117 I.P.C. Similarly as the other accused agreed with the accused 1 that he should commit this offence of inciting the public of the Mussalmans and the Ulama to spread those statements or make those attempts with that criminal conspiracy in respect of those that committed offence of abetment.

Now gentlemen I have finished with this troublesome business but I think I should recapitulate. I asked you to clear your minds of any prejudices either for or against the prisoners, and to do your duty without fear.

I told you that the religious question did not enter into the case at all. If the accused have broken the law of the land they must be punished by the law of the land and that it did not matter to us whether they

were acting under the impulsions of religion. I gave you my reasons for supposing that their views as to the religious question were wrong, but I warned you that I have no authority to pronounce thereon and recommended you to assume that they were right.

I then told you that for two or more persons to agree to commit an illegal act is itself an illegal act (that of conspiracy) whether or not any thing is done in consequence of such agreement and that in my opinion there was such an illegal conspiracy of which some of the accused were members and which had among its objects that of seduction of the soldiers. I gave you the evidence for and against as also the arguments of the accused and begged you to make up your own mind on this point, my opinion being by no means binding on you; particularly as regards No. 6.

Then I went on to deal with the further questions of whether any actual attempt to seduce troops had been committed by some of the conspirators in furtherance of the said conspiracy and gave you my doubts on the subject, leaving the matter to your own finding.

You must now consider your verdict and return a finding whether the accused or any of them are guilty or not guilty of the offences connected with section 131, other than those referred to in the fifth head of charge.

You will then give your opinion individually as Assessors on the other charges which are no doubt fresh in your memory and which I need not recapitulate.

Sd. B. C. KENNEDY,
Judicial Commissioner of Sind.

1st November, 1921.

After the Sheristedar finished reading of the Judge's charge to the Jury at 1-10 o'clock the Jury at once retired for considering their "verdict" as jury and opinion as "Assessors". At 1-35 p.m. the court broke for lunch to again meet at 3 p.m. when the Jurors and Assessors gave their verdict and opinions one by one to the Judge.

VERDICT OF THE JURY.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions Case No. 33 of 1921.

Crown *versus*. Mohamed Ali and 6 others.

Verdict of the Jury.

The Jurors retired and returned after an absence of 2 hours 15 minutes and stated through their foreman that they unanimously find the accused not guilty of both charges.

Sd. B. C. Kennedy,
Judicial Commissioner of Sind.

OPINIONS OF ASSESSORS.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions case No. 33 of 1921.

Crown *vs*. Mahomed Ali and 6 others.

Opinions of Assessors.

The case for the prosecution having been over the Assessors are called upon to give their opinion.

Mr. Ramchand Tulsidas is of opinion that the charge No. 3 is proved against Mahomed Ali because the resolution No. 6 was likely to cause the Muslim soldiers to fail in their duty.

As to the charge No. 4 accused with exception of No. 6 have all abetted. No. 1 Accused 6 to be given the benefit of the doubt.

Charge No. 5 proved against accused No. 1. The resolution being put to a gathering of more than 10 persons.

Charge No. 6, all accused except No. 6 have abetted No. 1. I have not taken into account the deep religious feeling of the accused.

Assessor No. 2 Mr. Critichel concurs.

„ 3 Mr. De Cruz „

„ 4 Disagrees.

As regards charge No. 3 accused No. 1 is not guilty and so are all the accused on the other charges.

Assessor No. 5 Mr. De Souza agrees with the foreman.

Sd : B. C. Kennedy,
Judicial Commissioner of Sind.

In the Court of the Judicial Commissioner of Sind.

Sessions Case No. 33 of 1921.

Crown *versus* Mahomed Ali and 6 others.

Finding.

The Court not thinking it necessary to disagree with the Jurors find that the accused Mahomed Ali, Hussain Ahmed, Saifuladin Kitchlew, Pir Ghulam Mujadid, Nisar Ahmed, Krishna Tirathjee and Shaukat Ali are not guilty of the charges under Sections 120 B, 115 with 131 and 120 B, 109 with 131 and acquit and discharge them.

Sd. B. C. Kennedy,
Judicial Commissioner of Sind.

1-11-1921.

FULL TEXT OF JUDGMENT.

In the Court of the Judicial Commissioner of Sind.

Sessions Court Jurisdiction.

Sessions Case No. 33 of 1921.

The King Emperor *versus* Mahomed Ali and 6 others.

JUDGMENT.

I accept the verdict of the Jury in respect of the charges under sections 120 B and 131 I. P. C. I have considered the opinion of the Assessors as regards the other charges. I agree with the opinion of the majority of the Assessors and find that accused No. 1 Mahomed Ali made a statement on the 9th July 1921 at Karachi calculated to cause the Mussalman Officers and Soldiers in the Army of His Majesty to disregard or fail in their duty, on that as he made it with the intention of causing such an effect, the truth of it is not material. I therefore find him guilty of an offence under Section 505 I. P. C.

Agreeing also with opinions of the majority of the Assessors, I am of the opinion that all the other accused with the exception of accused No. 6 conspired with Mahomed Ali and agreed with him that he should make the statement, that he did make with the intention of producing such an effect on the Mussalman Officers and Soldiers in the Army of his Majesty

As regards accused No. 6 after hearing the opinion of the Assessors I am of the opinion that there is a fair doubt as to whether he conspired. This opinion would obviously be of little weight.

Agreeing also with the opinion of the majority of Assessors I am of opinion that accused No. 1 Mahomed Ali at the same time and place in the same way, abetted the commission of the offence punishable under section 505 by bringing that statement specifically to the notice of the public there assembled at the meeting and by urging them to bring it home to every Mussalman in the Army. I think therefore that he committed an offence punishable under section 117 I. P. C. with 505 and 131 I. P. C.

Agreeing also with the opinion of the majority of Assessors I find that all the other accused with the exception of Accused No. 6 (Bharati Krishna Tirathji) conspired with accused No. 1 in the commission of his offence by agreeing with him that he should make the statement which he did make with the same intent, well knowing that it would so direct or incite the public to bring such statement to the notice of the Mahomedan soldiers and troops.

THE SENTENCE.

(To accused No. 6) The Court accepts your explanation of your action and agreeing with the Jury and the Assessors, I find you not guilty in respect of the offences under sections 120 B and 131 and acquit and discharge you as regards those offences.

I find you accused No. 1 guilty of an offence under section 505 I.P.C. and sentence you to undergo 2 years' rigorous imprisonment.

I find you, accused Nos. 2, 3, 4, 5, 7 guilty of conspiring with accused 1 to commit the said offence and sentence you under sections 109 and 505 I.P.C. to undergo rigorous imprisonment for 2 years.

I also find you accused No. 1 guilty of an offence under section 117 with 505 and 131 I.P.C. and you accused Nos. 2, 3, 4, 5, 7 guilty of conspiring in respect thereof with accused 1 under sections 109 and 117 with 505 and 131 and sentence you to undergo two years' rigorous imprisonment; the said sentence to run concurrently with those passed under the 3rd and 4th charges.

(Sd.) B. C. KENNEDY,

Judicial Commissioner-in-Sind.

Signed on 4th November 1921.

N.B.—The charge to the Jury is to be attached to and read as part of this judgment. Every copy of this judgment is to include a copy of the charges.

PUBLIC PROSECUTOR'S APPLICATION.

In the Court of the Sessions, Karachi.

Crown *versus* Mahomed Ali and others—Accused.

Application under sections 269 and 309 Cr. P. C

It is prayed on behalf of the Crown that this Honourable Court will be pleased to give judgment on the 1st charge in this case.

When opening the case the Crown referred to S. 269 (3) Cr. P. C. and rule 3 chapter IV of the Court of the J. C. and pointed out that the first charge was triable by the Court with the assistance of the Assessors. The whole case proceeded on that basis, the opening and closing address of P. P. and the addresses of the general accused repeatedly differentiated between the first charge which was triable by the Court and the second charge which was triable by the Jury.

What was said by the Court on the return of the Jury after considering their verdict could not be heard at all in the Hall. The Jury was sitting at a table on the dais and touching the desk at which the learned Judge was sitting. After the Jury gave their verdict and the Assessors

their opinion, Judgment was dictated to a short hand writer, sitting on the dais on the far side of the learned Judge. Not a word of what was said by the Court to the Jury or to the shorthand writer could be heard in the Hall.

The P.P. therefore asked to be allowed to see the draft judgment when submitted in longhand for correction before it was signed. This has now been shown to him and it appears from it that this Honourable Court intends to accept the opinion of the assessors on the first charge, as though it were verdict of a Jury.

It is respectfully submitted that the first charge must be decided under S. 309 (2) Cr. P. C. by this Honourable Court when it passes Judgment on the other charges triable and actually tried by it, as provided by S. 296 (3) Cr. P.C. and rule 3 chapter XIV of the Rules of the Court of the J. C. of Sind. The whole trial has proceeded throughout on this basis and it is respectfully submitted that the parties cannot be deprived of the rights of appeal on the facts by the Court treating the opinions of the Assessors in an "Assessor case" as if they were a verdict of a Jury.

From the copy of the "Hheads of the Charge" to the Jury just received from the Court it appears that, when charging the Jury the opinion of the Court was, that there was a far-reaching and wide-spread conspiracy which included among its objects the seduction of the troop. It also appears that the Court went on to say in its charge that "From that moment (when the doctrine of the unlawfulness of the military service began to be preached) in my opinion the Khilafat agitation became illegal and those who joined it were members of a conspiracy regardless of the fact whether any attempts were made directly to seduce the troops."

Attention is respectfully solicited to the decision reported in 9 Bombay Law Reporter on page 1057 and it is prayed that this Honourable Court will be pleased when passing Judgment on the other charges triable by it to give Judgment. On the first charge also after considering the opinions of the Assessors on this charge."

(Sd.) T. G. ELPHINSTON,
Public Prosecutor for Sind.

Karachi, 3rd November, 1921.

JUDICIAL COMMISSIONER'S NOTE.

Read application of the P.P. dated 3rd November 1921, in Sessions case 33 of 1921.

I am sorry there has been this mistake due to the bad acoustic properties of the Court. I am afraid it is too late for me to do anything.

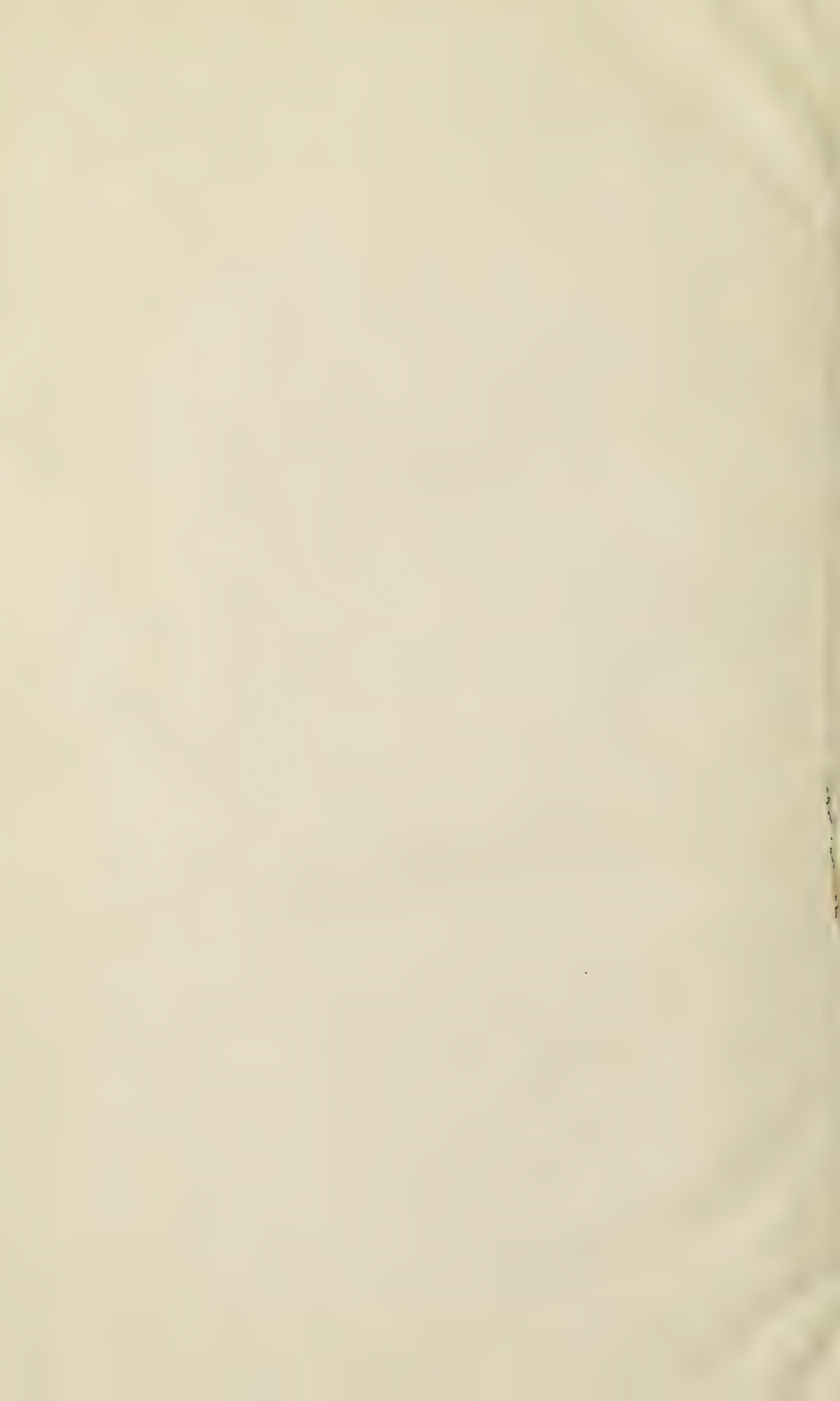
I am still of the opinion that where there are two charges one triable by the Judge with a Jury and the other by the Judge and Assessors and these charges are very closely connected, so that it will be impossible to find the accused guilty on the Assessors charge without coming to such a decision on facts that it would have been necessary to find the accused guilty on the Jury charge also had that been triable by the Assessors, the Judge can leave the whole case to the Jury. To act otherwise would think be to destroy any sense of responsibility in the Jury. I have always myself proceeded on these lines in Jury cases. I did so in the present case with more assurance because the charges were originally one and were only divided in this Court (as I thought) for convenience and for the better information of the accused.

In any case the question is rather academic because as far as I can see had I found the accused guilty on the first charge, I should not, as I was not prepared to refer the Jury's finding on the second charge to the High Court, have passed any other sentence than I did. If these views of mine are wrong they can be tested if necessary by an appeal. But of course I cannot now change my judgment on a material point after consultation to the shorthand writer though the judgment is not yet signed. I therefore reject this application on the ground that the judgment is already pronounced. I do not think that the fact that circumstances made it impossible for my judgment to be heard makes any difference.

(Sd.) B. C. KENNEDY,

Judicial Commissioner of Sind.

Karachi, 4th November 1921.



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